

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

STUDENTS FOR FAIR ADMISSIONS,) TRIAL DAY 3
)
Plaintiff,)
) Civil No.
vs.) 1:23-cv-2699-RDB
)
THE UNITED STATES NAVAL) Baltimore, Maryland
ACADEMY, ET AL.,)
) September 18, 2024
Defendants.) 10:07 a.m.
)

THE TRIAL IN THE ABOVE-ENTITLED MATTER CONTINUED
BEFORE THE HONORABLE RICHARD D. BENNETT

A P P E A R A N C E S

On Behalf of the Plaintiff:

ADAM K. MORTARA, ESQUIRE
PATRICK STRAWBRIDGE, ESQUIRE
J. MICHAEL CONNOLLY, ESQUIRE
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On Behalf of the Defendant:

JOSHUA E. GARDNER, ESQUIRE
CATHERINE M. YANG, ESQUIRE
ANDREW E. CARMICHAEL, ESQUIRE
JOHN ROBINSON, ESQUIRE
MEDHA GARGEYA, ESQUIRE
CHRIS E. MENDEZ, ESQUIRE

Also Present:

EDWARD BLUM, STUDENTS FOR FAIR ADMISSIONS
BRUCE LATTA, NAVAL ACADEMY
TRACEY URBAN, PARALEGAL
LINDSEY O'CONNOR, PARALEGAL
MICHEAL PUSTERLA, IT
ERROL SPEARS, IT

(Computer-aided transcription of stenotype notes)

Reported by:

Ronda J. Thomas, RMR, CRR

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1 (10:07 a.m.)

2 **THE COURT:** Good morning, everyone. Sorry to keep you
3 waiting for just a few minutes. You all may be seated.

4 And, Dean Latta, if you'll stand, please.

5 We'll reswear the witness, please. Thank you.

6 **THE CLERK:** Good morning, sir. Please raise your
7 right hand.

8 (Witness sworn.)

9 **THE CLERK:** If you don't mind, please, restating and
10 respelling your name for the record.

11 **THE WITNESS:** Stephen Latta. First name is
12 S-T-E-P-H-E-N, last name L-A-T-T-A.

13 **THE CLERK:** Thank you.

14 **THE COURT:** You may continue, Mr. Gardner.

15 **MR. GARDNER:** Thank you, Your Honor.

16 - - -

17 CONTINUED CROSS-EXAMINATION

18 - - -

19 **BY MR. GARDNER:**

20 **Q.** Welcome back, Dean Latta.

21 **A.** Yes.

22 **Q.** I want to turn to the slate review process and admissions
23 decisions, including when and how the slate review committee
24 considers race. What factors does the slate review committee
25 consider in deciding whether to extend an offer of appointment?

1 A. Well, first of all, it obviously depends a lot on the --
2 that's submitted by the member of Congress. And when having --
3 assuming, for example, the principal method, the -- if the
4 principals qualify, then we're bound to offer that person
5 because that's the person -- if we're going to offer the
6 vacancy, that's the person that the congressman designated; so
7 they're -- regardless of whether they're majority or minority
8 or whether their whole-person multiple is higher or lower than
9 the rest of the slate, then we're bound to offer that person
10 straight up.

11 In terms of the principal competitive method or the
12 competitive method in the -- in -- when they offer a principal
13 with a competitive list of alternates, that's an unranked list.
14 Our slate review committee may receive the files in
15 whole-person multiple order, and that's similar to what the
16 competitive method was.

17 So we compare -- we normally go with the top whole-person
18 multiple, the way it's -- if the records are close, we will
19 compare them, look at the strength of the record, all the
20 holistic factors in there, and that the race and ethnicity can
21 help inform a decision. But it's a nondeterminative factor.
22 It's one of the many factors we might look at.

23 Q. So let me unpack that just a little bit. With respect to
24 the principal ranked alternates method --

25 A. Yes.

1 Q. -- when a congressperson has nominated a candidate under
2 that method, is the candidate's race or ethnicity ever
3 considered?

4 A. No.

5 Q. If a congressperson nominates a candidate using the
6 principal unranked method and the principal is qualified, is
7 that candidate's race or ethnicity considered in making an
8 admissions decision?

9 A. No.

10 Q. If a congressperson nominates a candidate using the
11 principal unranked method, and the principal either declines an
12 offer or is not qualified, how, if at all, may race or
13 ethnicity be considered in offering admission to a candidate on
14 that slate?

15 A. So the reality of it is that, again, we have a ranked list
16 by whole-person multiple order. And then beyond that, we can
17 see if they've been qualified by the board, not qualified,
18 et cetera. And we go on strength of the record.

19 But, typically, if there's two records or three records
20 that are extremely close in multiple order, race might be
21 considered as one of the nonholistic factors when comparing the
22 records. But, overall, strength of the record carries the day
23 most of the time.

24 Q. Under that set of circumstances, does the Naval Academy
25 ever offer admission to a candidate based only on his race or

1 ethnicity?

2 A. No.

3 Q. Now, if a congressperson nominates a slate of candidates
4 using the competitive method, how may race or ethnicity be
5 considered in offering admission to a candidate on that slate?

6 A. It would be similar to the principal with the unranked
7 list and the principal isn't qualified. Again, we would see
8 the files ranked in whole-person multiple order, whether
9 they're qualified or not.

10 And then, again, if the files were close, we would
11 actually pull the records up. We would compare them. We would
12 look at the strength of the record overall. And it might play
13 into being one of the many holistic factors that the slate
14 review committee might look at.

15 Q. Under the competitive method, does the Naval Academy ever
16 offer admission to a candidate based only on her race or
17 ethnicity?

18 A. No.

19 Q. Now, Dean Latta, I think you alluded to this, but are
20 there circumstances where, under the competitive method, the
21 Naval Academy decides to extend an offer to the applicant with
22 a relatively lower whole-person multiple where race or
23 ethnicity could be a factor in the decision?

24 A. Say that again.

25 Q. You talked about circumstances where you may compare two

1 candidates under the competitive method, correct?

2 A. That's correct.

3 Q. And I think you said that there are circumstances where --
4 there are times when you might lower -- offer admission to the
5 person with the relatively lower whole-person multiple score,
6 correct?

7 A. Yes.

8 Q. And I believe you said that in that circumstance, race or
9 ethnicity could be one factor that you consider. Is that
10 correct?

11 A. That's correct.

12 Q. Now, in that circumstance where you are offering the
13 person with the relatively lower whole-person multiple the
14 offer, what typically happens to the person with the higher
15 whole-person multiple?

16 A. Well, they're still considered for an offer of
17 appointment. And in many cases, they often will end up coming
18 in as a qualified alternate or they get offered off the wait
19 list as an additional appointee.

20 Q. How often, in your experience, does the person with the
21 higher whole-person multiple who is not the slate winner come
22 in as either a qualified alternate or as an additional
23 appointee?

24 A. It's quite common.

25 Q. You've mentioned qualified alternates. Just briefly, how

1 are qualified alternates selected?

2 A. Well, qualified alternates, it kind of -- I have to
3 describe a little bit of how the reviews go.

4 They're the list of the top 150 candidates who are fully
5 qualified in our admissions process -- and that includes the
6 admissions board, the medical, CFA nomination -- who are not
7 designated slate winners on a congressional slate; so they have
8 to have a congressional nom.

9 Q. And how many qualified alternate slots are you allowed to
10 fill?

11 A. Up until this year, 150 we're required to fill by law.
12 And starting this year, it's changed to 200.

13 Q. At the time that you are making admissions decisions, Dean
14 Latta, do you necessarily know who will be a qualified
15 alternate?

16 A. No, I don't. In fact, early in the admissions cycle, we
17 have a lot of folks with high whole-person multiples, and we
18 anticipate when we offer an appointment that they will either
19 come in as a qualified alternate or as a slate winner.

20 But, to be honest with you, until we go through all the
21 congressional slates -- and that often takes two or three
22 different views -- we don't have complete clarity on who is
23 going to be a qualified alternate.

24 Q. And just so we have some clarity in the record, when you
25 say the top 150 or top 200, by what metric are you using?

1 A. This is their whole -- the law says order of merit, but
2 our interpretation is their whole-person multiple.

3 Q. Got it. To what extent is race or ethnicity considered in
4 making offers to those who ultimately will be slated as
5 qualified alternates?

6 A. It does not play a factor.

7 Q. Now, you also talked about additional appointees. Can you
8 just remind the Court what an additional appointee is.

9 A. An additional appointee is a category for candidates who
10 were offered and accepted appointments, but, at the end of the
11 cycle, they were not charged as a congressional slate winner or
12 a slate winner on another nomination list or as a qualified
13 alternate.

14 Q. You talked about the end of the cycle, and I just want to
15 follow up on that.

16 At what point in the admissions cycle does the Naval
17 Academy start making offers to students who will ultimately be
18 slated as additional appointees?

19 A. Well, it -- we tend -- when we make offers early on, we
20 often anticipate, you know, by recommendations to the
21 admissions board, for example, that they will come in
22 somewhere, but it's often late in the cycle after we've gone
23 through all the congressional lists when we get a little bit
24 more clarity on those -- on the additional -- what group is
25 going to end up as additional appointees.

1 The challenge is, for example, when we offer a candidate,
2 the admissions board, for example, recommends a letter of
3 assurance for a candidate. We are doing that with the
4 anticipation that they will come in as a slate winner or as a
5 qualified alternate.

6 But sometimes after all the records come in and we look at
7 the congressional slates, then that person ends up getting
8 charged as an additional appointee later on.

9 And even early in the year, many of the blue-chip
10 athletes, for example, who are direct entry or some of our
11 fleet candidates who are direct entry end up getting charged as
12 additional appointees because they don't -- their multiple at
13 the end of the cycle ends up being lower than those we've
14 charged.

15 Q. I believe you testified earlier that race or ethnicity may
16 be a factor that you consider in making offers of appointments
17 for additional appointees, correct?

18 A. That's correct.

19 Q. Can you describe how the slate review committee considers
20 race in the context of making offers for additional appointees?

21 A. It would be essentially the same. It would be after
22 there's a detailed review of their admissions file, reviewing
23 all of the factors that we looked at both at the admissions
24 board and the slate review committee.

25 I often will go back and take another look at the

1 congressional slates to see, you know, who's accepted and
2 declined and -- as well as a QA list. But it's done after a
3 pretty thorough review of their file.

4 Q. Dean Latta, at any time in the slate review committee's
5 decision-making process to extend offers, is an applicant's
6 race or ethnicity ever considered as a standalone factor in
7 making admissions decisions?

8 A. No.

9 Q. You had talked about with my friend on direct examination
10 yesterday superintendent nominations, correct?

11 A. Correct.

12 Q. Do you recall that?

13 What are superintendent nominations most often used for?

14 A. They're most -- excuse me. They're most often used for
15 blue-chip athletes.

16 Q. Are there any other categories of applicants where
17 superintendent nominations are often used beyond blue-chip
18 athletes?

19 A. Our experience is that there are sometimes other highly
20 qualified candidates that had a letter of assurance that we did
21 not offer appointment to. And at some point with discussion
22 with the superintendent, the decision will be made to give them
23 a superintendent's nom.

24 Q. Does the Naval Academy ever use superintendent nominations
25 in order to compete with other services academies?

1 A. Yes.

2 Q. Is that a relatively frequent use of a superintendent
3 nomination?

4 A. It's not a frequent use, but it has factored into a few
5 offers given in a couple of the classes.

6 Q. How many candidates can be nominated through a
7 superintendent nomination?

8 A. The superintendent has the authority to nominate 50
9 candidates.

10 Q. And do you recall how many superintendent nominations were
11 provided for the class of 2027?

12 A. I'm going off memory, but it would be about 14 or so.

13 Q. And of those 14, how many superintendent nominations were
14 for athletes?

15 A. I'm going off memory, but I think 12 of them.

16 Q. Now, you said on direct examination with my friend that
17 race could be a nondeterminative consideration in
18 superintendent nominations, correct?

19 A. Correct.

20 Q. Since at least 2009, has race been a consideration in
21 extending a superintendent nomination?

22 A. No. It's been competition within the school. In fact,
23 we've had several candidates that, for example, were our first
24 offer, then didn't get a nomination from another source; so
25 that would be the reason.

1 Q. And what's your basis for saying that? How do you know
2 that superintendent nominations have not considered race since
3 at least 2009?

4 A. Because, in every case that I can remember, we were
5 competing against another service academy or another elite
6 school for somebody who had a strong record. And the
7 superintendent felt strongly that we should give them an
8 opportunity to come to the Naval Academy.

9 Q. Dean Latta, are there circumstances where the slate review
10 committee values particular traits, like, say, life experience,
11 differently depending on where it is in the admissions cycle?

12 A. Yes. And, again, it's important all the way through the
13 admissions cycle, but often as we get toward the end and we're
14 trying to fill up the remaining spots in the class, oftentimes
15 unusual life experiences, when we're reviewing files of
16 candidates who are still remaining qualified or being
17 considered for admission, that can be one of the factors that
18 we may look at.

19 Q. Now, I want to ask you some questions about how you
20 consider individuals on slates.

21 Are there congressional slates where the Naval Academy
22 compares candidates against each other?

23 A. Yes.

24 Q. How frequently does that happen?

25 A. It's quite common.

1 Q. Why does the Naval Academy compare one applicant against
2 other applicants on the same slate?

3 A. Well, it -- again, the whole-person multiple is a great
4 tool to use to compare candidates, and it's usually pretty
5 reflective of all the work the admissions board has done.

6 But there are actually nuances in the multiple. And we've
7 found by our experience, which is the number of years,
8 obviously, that I've been there, that sometimes a person can be
9 2 or 300 points lower than the candidate next to them. But
10 when you pull the admissions file out, the person looks like a
11 better candidate to fit for the Naval Academy.

12 So the reality of it is, you know, we do think it's a
13 great tool, but we think it's important to actually look at the
14 strength of the file. And, again, the multiple captures a lot
15 of information metrically, including class rank and grades. It
16 doesn't always capture all the written words written by the
17 people who observe them.

18 Or, again, sometimes it's life experiences, other
19 socioeconomic factors, or first-gen American that may or may
20 not have been included in the multiple that are important. So
21 actually pulling the records up and comparing them side by side
22 helps us make as informed a decision as we can on the
23 individual candidates.

24 Q. Now, Dean Latta, I just asked you whether the Naval
25 Academy ever compares candidates on a slate against other

1 candidates on the same slate.

2 A. Correct.

3 Q. Are there circumstances where the Naval Academy ever
4 compares the record of a candidate on one slate against
5 candidates on other slates?

6 A. Yes. And that's quite common also.

7 Q. Why do you compare candidates on one slate against
8 candidates on other slates?

9 A. Well, the process is pretty iterative. So, for example,
10 you know, we get a congressional slate in in November. And we
11 look at it. We may or may not make a decision on it. And, lo
12 and behold, when the -- when the two senate slates come in
13 later or other slates in the same state come in, we'll find
14 that candidate and other candidates will also be listed on the
15 senate slates as well.

16 And so if I were to go, for example -- and I'll use --
17 I'll just name a state. Let's say Kansas, Second District
18 Kansas, we had John Smith who's on Kansas 2. We look down. He
19 has almost the same record as another student in that same
20 district.

21 Lo and behold, he got nominated by both senators. And
22 even though our intent was to look strictly at that one
23 district, then we also are bound to go look at the senate
24 slates and see whether they're on the senate slates as well.

25 In many cases, we'll find very similar records on the

1 senate slate, either one or both senate slates. And it can
2 become more complicated when the person that has a similar
3 record on that slate may be nominated from a completely
4 different district.

5 So, often, it takes a lot of extra work for us to look at
6 not just the congressional office but the senate slates or even
7 another congressional office in the same state in comparing
8 candidates to determine who has the best qualifications we
9 would consider to make an offer of appointment.

10 **Q.** In this circumstance, Dean Latta, where an applicant has a
11 nomination from both their senator and their representatives,
12 does the slate review committee have an order in which they're
13 looking to fill the slates?

14 **A.** Well, we generally try to get to the congressional slates
15 first because that drives a lot of our outreach efforts. And
16 that's -- and, again, we are looking at students from every
17 congressional district in the country. So the senate slates
18 are important, but they nominate from the entire state. So the
19 priority is to fill the congressional vacancy.

20 **Q.** Just a very few quick questions about the timing of the
21 slate review committee's work.

22 **A.** Yes.

23 **Q.** In your experience working in the admissions office, when
24 do the strongest candidates typically complete their
25 application during the admissions cycle?

1 A. In my experience working in our office, the students who
2 have the strongest application files are usually the first ones
3 to get their files turned in.

4 Many of those students are either applying to the other
5 service academies or they're applying to other schools. And in
6 many cases, the other schools, which be an Ivy League or a
7 high-tech school, they're looking for early decision or early
8 action; so they're extremely motivated to get their files done
9 early so that they can make a decision early on where they're
10 going to school the following year.

11 Q. Does the slate review committee typically hold off on
12 making decisions on competitive candidates until the end of the
13 admissions cycle?

14 A. No. We try to make decisions as early as we can. What
15 oftentimes delays decisions, again, always comes back to
16 looking at the nomination lists submitted by the congressmen or
17 the senators because, even though we may receive it in
18 November, a lot of the -- remember, the candidates don't have
19 to have their records complete until the end of January.

20 So we don't make -- if it's going to adversely affect
21 another candidate on that slate, we will hold off making a
22 decision. And, frankly, in November, usually, there's a few
23 records that aren't completed.

24 Another group of students that we typically don't even get
25 to the admissions board till January, all of our -- what we

1 call post-high school and college students because we always
2 want to look at their transcripts from college for their first
3 semester.

4 So the slate process is -- we start it as early as we can.
5 We're trying to compete with other schools. We're trying to
6 make decisions as early as we can, but oftentimes it comes back
7 to waiting until not only the applications get completed and
8 turned in, getting the admissions board to look at the files,
9 and then coming back to look at it.

10 So it may take two, three, or four looks on an individual
11 congressional member's slate before we make a final decision on
12 it. And sometimes, for example, the person who we thought was
13 going to be the slate winner on the congressional slate early
14 on ends up being the slate winner on the senate slate or QA at
15 the end of the cycle.

16 Q. Earlier you used the term "iterative." When you're using
17 that term, is that what you're meaning, what you just
18 described?

19 A. They're not standalone. Even though we tend -- we want to
20 believe that all the nomination lists are separate lists -- and
21 they are separate lists, but they're affected by the candidates
22 in many states. And the decisions are affected by where
23 they're listed on the different lists and what have you.

24 So we actually -- as much as we want to look at the list
25 on its own, we often have to look at the other lists before we

1 make a decision.

2 **Q.** And just one last quick question about timing. And it's
3 really the converse of what I just asked you.

4 Does the Naval Academy typically wait until the end of the
5 admissions cycle to turn down or reject a large number of
6 candidates?

7 **A.** Yeah. We have a process for turning down candidates. But
8 if somebody is fully qualified, we tend to wait.

9 And a good example is I've had congressional slates where
10 the person might have been the second, third, or fourth person
11 when we first looked at them on the congressional list. But,
12 lo and behold, as we've gone through the months and other
13 records are completed, we make offers of appointment, we may
14 find that the first person declined an offer. The next person
15 may have been turned down medically. Another person may not
16 have completed their application file.

17 So sometimes on our first look, that person who might have
18 been the third- or fourth-ranked person may not have looked
19 that great; but by the middle of March or whatever, or end of
20 March, they might be the best person we have to offer an
21 appointment to and what have you.

22 And so as much we want to make decisions early on, we do
23 it at the benefit of giving every person who has applied and
24 has completed an application every chance to be considered for
25 an offer of appointment.

1 Q. Dean Latta, I want to change gears now and talk a little
2 bit more about the prep schools because that has been an issue
3 in this case.

4 And I want to turn your attention back to your training
5 slide deck. That's DX79. And I'd like to take a look at
6 Slide 28.

7 Oh, I'm sorry. Can we -- perfect. We're going. Thank
8 you.

9 And maybe, Dean, while it's loading, let me just ask you a
10 basic question.

11 When we refer to prep school programs, what are the prep
12 school programs?

13 A. There's three different programs we have. I think we
14 talked yesterday a little bit about the Naval Academy prep
15 school. That is a government-funded program in Newport, Rhode
16 Island. It runs for about 10 months.

17 It was established in the early 1900s primarily to provide
18 an additional year of preparation for enlisted sailors and
19 Marines. But we are able to put other deserving candidates in
20 there who could benefit from a year of prep.

21 We have a civilian program run through the Naval Academy
22 Foundation -- Naval Academy Alumni Association called the
23 foundation program, where they affiliate with several civilian
24 schools around the country to provide a similar opportunity.
25 The curriculum is very similar to NAPS, but there may be a

1 cutoff that stops it depending on the school.

2 And then the third program, which is smaller, is called
3 civilian prep, where the student has been identified for prep
4 but they want to go to school on their own and pay their own
5 way through.

6 And so that -- and, again, these are all similar programs,
7 but there's three different programs.

8 Q. And just for the benefit of the court reporter, if we
9 could slow down just a little bit.

10 A. Oh, sorry.

11 Q. I appreciate that.

12 MR. GARDNER: Can we get the slides up.

13 THE COURT: We're looking for Defendants' Exhibit 79.
14 Slide Number 28, I believe, has been requested.

15 MR. GARDNER: Yeah. I think we're just having some
16 issues pulling it up.

17 THE WITNESS: I can see it.

18 BY MR. GARDNER:

19 Q. Yeah, well, we can do the binder, but I think the judge
20 would like it on the screen.

21 A. Okay. I'm sorry.

22 THE COURT: I don't have it on my screen.

23 MR. GARDNER: No, I know.

24 MR. MORTARA: We can get it on the screen. We've got
25 it.

1 **MR. GARDNER:** I can hand you up a binder, Your Honor.
2 I'm sorry. I didn't realize it's not working.

3 May I approach?

4 **THE COURT:** Yes. What is the reason we can't use the
5 screen is my question.

6 **MR. GARDNER:** I don't know the answer to that.
7 It just came up. I'm sorry, Your Honor.

8 **THE COURT:** That's okay.

9 **MR. GARDNER:** And we're talking about Slide 28,
10 please. This is Slide 24.

11 **BY MR. GARDNER:**

12 **Q.** Now, Dean Latta, on Slide 28, this discusses the
13 consideration for the prep school programs you just described,
14 correct?

15 **A.** Correct.

16 **Q.** Could you describe, please, what information is being
17 reflected in Slide 28 of Defense Exhibit 79.

18 **A.** Yeah, this is an informative slide that would be used to
19 discuss the types of qualities, among the many things of -- or
20 maybe what identifies a student who might be considered for a
21 prep program.

22 And, obviously, the most important thing would be the
23 requirement to get some additional academic preparation. The
24 most common is they're missing courses or their progression
25 through high school hasn't put them in a position where they're

1 ready to start our curriculum. It could be grade trends and
2 other things.

3 Physical fitness is also a factor with many of our
4 students, particularly the ones -- we do have students, for
5 example, that have to work full time, and we have the
6 additional year to build on their physical fitness as part of
7 that.

8 Again, particularly for fleet candidates, many of them
9 have been out of the books or away from schooling for at least
10 a couple of years and what have you, and oftentimes they're not
11 particularly great high school candidates but have done well in
12 the fleet.

13 We're always looking for, obviously, great leadership
14 potential. And consideration, obviously, goes -- in addition
15 to our enlisted sailors and Marines and recruited athletes,
16 probably the most important factor is our underserved
17 districts -- we call them underrepresented districts, which
18 we've talked about before -- because of poor representation at
19 the Naval Academy.

20 And, again, many of these districts are in areas where the
21 school systems are weak. So the students that typically -- if
22 we can get them to finish an application, for example, and be
23 considered by the admissions board, typically they need an
24 extra year for preparation.

25 **Q.** Now, Dean Latta, we talked yesterday about fleet

1 candidates. My question for you is this: Are fleet candidates
2 given priority in filling spots at the prep programs?

3 A. Yes. We are always cognizant of the fact that NAPS was
4 established for enlisted sailors and Marines; so they're our
5 first priority for offering opportunities to go to NAPS.

6 Q. Let's take a look at another exhibit. This is Defendants'
7 Exhibit 104.

8 Dean Latta, do you recognize this chart?

9 A. Yes.

10 Q. What is it?

11 A. It's a statistical chart which outlines the paths for
12 admission for fleet candidates in different class years. And
13 that includes those who have come straight into the Naval
14 Academy from -- it says from the fleet in blue. The red is the
15 number of candidates that have matriculated through NAPS. And
16 if the math is correct, the green line should be a reflection
17 of the two numbers added together.

18 Q. So am I correct, Dean Latta, that this chart reflects
19 that, beginning in 2017, more prior enlisteds entered the Naval
20 Academy from NAPS than directly from the fleet?

21 A. That's correct.

22 Q. Why doesn't the Naval Academy admit more students from the
23 fleet directly into the Naval Academy?

24 A. Well, we would certainly love to. I think there's some
25 reality factors we have to consider.

1 First and foremost, NAPS is limited in capacity. And I
2 think the current number is about 310 students total. And we
3 have been putting in somewhere between 235 to 245 students in
4 the last couple of years -- last few years to NAPS.

5 But NAPS also is an accession source for the Coast Guard
6 Academy.

7 And then there's a newer program, which I believe is
8 called BOOST 2, for students who have applied to NROTC who need
9 an additional year of prep. And there's usually some students
10 that go in there.

11 So there's not much extra room. But the reality of it is
12 that, if you look at all of our preparatory programs in a given
13 year, there's probably about 200 -- my math is not very good,
14 but probably 270 to 300 students that access into the Naval
15 Academy from preparatory programs because they need the prep.
16 And at the same time, our classes have gotten smaller because
17 there's higher retention in our student body.

18 So -- and one of our main -- obviously, our main priority
19 is to fill congressional vacancies as well. So if we make NAPS
20 bigger -- or continue to make it bigger, it ends up affecting
21 our ability to offer congressional vacancies.

22 And in addition to that, one of our charges is to make
23 sure there's a path for admission for students who have not
24 been successful at getting in the first time and have to apply
25 out of college or after some other experiences and what have

1 you.

2 So it would -- we're kind of at the point where it would
3 inadvertently or adversely affect other opportunities to get
4 into the Naval Academy.

5 Q. Dean Latta, because members from the fleet who are
6 applying to the Naval Academy are definitionally at least a
7 year out of college, do they tend to be less academically
8 prepared than those that are applying to the Naval Academy
9 directly from high school?

10 A. I'm sorry. Say that question again.

11 Q. Because those people from the fleet that are applying to
12 the Naval Academy are definitionally at least a year out from
13 high school, do they tend to be less academically prepared than
14 those that are applying directly from high school to the Naval
15 Academy?

16 A. Yeah, my experience has been is that a lot of our sailors
17 and Marines have done a great job of proving themselves in the
18 fleet, but many of them -- first off, most of them have been
19 out at least two years of high school, but many of them have
20 enlisted in the Navy.

21 Oftentimes they're from some of our underrepresented
22 congressional districts because they were not good high school
23 students and may have been socioeconomically disadvantaged or
24 have other socioeconomic factors in their development coming
25 out of high schools.

1 So NAPS is a very valuable program for helping them not
2 only get back into the books, but also fill holes in their
3 academic profile so they can succeed at the Naval Academy.

4 Q. Do members of the fleet who are applying to the Naval
5 Academy tend to have a lower application completion rate than
6 those that are applying directly from high school?

7 A. Yes. And that's one of our challenges. We have a pretty
8 robust recruitment program that includes a fleet -- enlisted
9 sailor in our office. And, in addition, we get help from the
10 Marines who are located at the Naval Academy and do outreach.

11 But they -- in addition to sending out a notification
12 every year to the active forces in the Navy and the Marine
13 Corps, we actively go to each of the bases to recruit sailors
14 and Marines and what have you.

15 But there's some challenges. The first and foremost one
16 is really the Title X limits that often precludes sailors and
17 Marines who didn't even know about the Naval Academy until
18 they're 22 years old. So there's no opportunity to go to NAPS
19 in there, and they do need academic prep and what have you.

20 The second thing is that sailors and Marines oftentimes
21 get married or have dependents. So that is a legal, you know,
22 roadblock for them to get into the Naval Academy.

23 There's a big pay cut for anybody who is a sailor or
24 Marine, particularly if they're an E4 and E5, to go to the
25 Naval Academy and become a midshipman and what have you. And

1 many of them, obviously, have financial obligations through car
2 loans and other stuff; so that -- that deters a lot of them.

3 But probably one of the bigger things is that we have --
4 they have to get a recommendation from their CO and their chain
5 of command. And oftentimes the CO or the chain of command
6 doesn't think they're ready, and so they will not often
7 recommend them -- provide a recommendation, which is actually a
8 requirement for us to give them a Secretary of the Navy
9 nomination and what have you.

10 And then the third thing really is just, you know, they
11 have -- we're competing against people who are working
12 full-time. And, of course, their chain of command is always
13 supportive of them applying, but they're also worried about
14 them meeting their work requirements.

15 So it's a challenge for us. I think last year the
16 application completion rate for sailors and Marines was about
17 17 percent of the numbers that applied.

18 **Q.** Dean Latta, plaintiff's expert contends that one
19 race-neutral alternative you should consider is increasing the
20 number of members of the fleet into the Naval Academy.

21 Given all of these constraints that you just mentioned, do
22 you think increasing the number of members from the fleet to
23 the Naval Academy is a viable option?

24 **A.** I don't think it's a reasonable one that we can do. And,
25 again, there's a lot of -- you know, there's deployment cycles

1 and other things that play into it. But I -- for many of the
2 reasons I just listed. I would love to make NAPS bigger and
3 admit more sailors and Marines, but there's just too many
4 practical things.

5 And, again, we get help from the officers who -- many of
6 them are Naval Academy grads -- to mentor them. But the
7 obvious things are practical factors in life that prohibit us
8 doing much better than we are.

9 Q. Can we go back now to Defendants' Exhibit 79 and go to
10 Slide 28.

11 MR. GARDNER: And I'd like, Your Honor, on the record,
12 to thank plaintiff's tech support for helping us out with this.

13 So thank you.

14 THE COURT: Thank you, Mr. Pusterla. That's
15 P-U-S-T-E-R-I-A?

16 MR. PUSTERLA: L-A.

17 THE COURT: Okay. Good. You're part of the record, I
18 believe. So thank you, sir.

19 MR. GARDNER: I think under the unintended efficiency
20 act, we may have some problems, but we'll sort that out on the
21 back end.

22 THE COURT: And we have Mr. Spears on the other end
23 over here --

24 MR. GARDNER: Correct.

25 THE COURT: -- so we'll thank both of them on the

1 record.

2 **BY MR. GARDNER:**

3 **Q.** Now, Dean Latta, on DX79, Slide 28, there's a reference to
4 recruited athletes, correct?

5 **A.** Correct.

6 **Q.** Are recruited athletes also given priority in filling
7 spots at the prep programs?

8 **A.** Yeah. We reserve a certain number of vacancies at NAPS,
9 or slots, as you may, for the athletes that are being recruited
10 for specific teams. In NAPS' case the primary sports that are
11 up there are basketball, track, and football. There may be a
12 couple others, but those are the main ones. But they're big
13 team sports.

14 **Q.** And to what extent are recruited athletes
15 disproportionately minorities?

16 **A.** They are a large portion of the minority pool,
17 particularly in those sports.

18 And, again, I think I mentioned earlier that more than
19 half of the African Americans we admit each year have either
20 matriculated through NAPS -- and the vast majority of them are
21 African American. And it reflects in NAPS as well.

22 But they have unusual athletic prowess, obviously. Many
23 of them have great leadership experiences on the sports team,
24 but they haven't worked particularly hard in high school
25 because of their athletic ability; and so they do need

1 additional preparation to succeed in our environment.

2 Q. "They" meaning recruited athletes?

3 A. Correct.

4 Q. Got it. Just making sure.

5 A. Sure.

6 Q. No. Thank you.

7 Could we please turn to the next slide.

8 Now, this slide is unnumbered, but it says, "USNA Prep
9 School Programs." And the question I want to ask you about is
10 there's a fifth bullet. It says, "Numbers determined by
11 superintendent."

12 Do you see that?

13 A. Yes.

14 Q. What does that mean? What is that referring to?

15 A. Well, each year, we -- there's a discussion about the --
16 not only the size of the incoming class but how big each of the
17 preparatory programs will be for the year. And that's a
18 decision made by the superintendent.

19 Q. Are there any capacity constraints on the size of NAPS'
20 classes?

21 A. Yes. And I think I mentioned earlier there are -- again,
22 they only have bed space right now, I think, for a little over
23 300 students. And then some of the students up there, by
24 agreement, are going to end up matriculating to the Coast Guard
25 Academy. For the same reasons that we need NAPS, they use

1 NAPS.

2 And then this other program, BOOST 2, has stood up
3 recently to support students who need academic prep to go to
4 NROTC.

5 So even if I try to make NAPS bigger, there's not a lot of
6 extra capacity in the facilities there.

7 Q. Just two more quick questions about NAPS, and then we'll
8 move on.

9 Has the Naval Academy ever considered devoting most or
10 even all of its seats at the prep schools to socioeconomically
11 disadvantaged students?

12 A. We haven't -- that would be an -- no. We're looking for
13 students -- we are looking for students that need academic
14 prep, but there is an overlap in there for certain because the
15 main priority when we look to fill slots at the prep school is
16 we actually look at these underrepresented congressional
17 districts.

18 And many of the students there, again, they're
19 socioeconomically disadvantaged. They're good students in weak
20 schools. So NAPS ends up being a very natural place to put
21 students who are socioeconomically disadvantaged in there.

22 We haven't necessarily done a good job of identifying them
23 through the RAB process, but I can assure you, when I look at
24 files and -- along with my slate review committee, that's where
25 we look first.

1 Q. Dean Latta, last question about NAPS.

2 To what extent is race or ethnicity a consideration in
3 deciding whether to admit an applicant from the prep programs
4 you just discussed to the Naval Academy?

5 A. It is not. The decision to admit a student from the prep
6 programs are based on their performance in the programs.

7 Q. I want to change gears, Dean Latta.

8 You have been asked a number of questions over the past
9 two days about how the Naval Academy considers race in the
10 admissions process, but I have a fundamental question for you.

11 Why does the Naval Academy consider race in the admissions
12 process?

13 A. Well, I think it helps inform decisions. And, again,
14 we're trying to create a student body of midshipmen who have a
15 wide range of diverse life experiences and backgrounds because
16 they're going to end up leading in the Navy and Marine Corps,
17 which are extremely diverse, with students who have a wide
18 range of diverse backgrounds, including race and ethnicity.

19 So we think it's important in creating our student body to
20 create that mechanism to create leaders that will go on and
21 lead in the Navy and Marine Corps after graduation.

22 Q. Let's look at another exhibit. I believe you looked at
23 this already with my friend. It's Plaintiff's Exhibit 31.

24 THE COURT: This is plaintiff's exhibit or defendants'
25 exhibit?

1 **MR. GARDNER:** Plaintiff's Exhibit 31.

2 **THE COURT:** Plaintiff's Exhibit 31. Thank you.

3 **MR. GARDNER:** You're welcome.

4 **BY MR. GARDNER:**

5 **Q.** And I'd like to look at the paragraph under the first
6 bullet. And I want to focus on the last sentence. And this
7 states that "No points or quotas exist for race, but it can be
8 a factor among the constellation of other factors."

9 Dean Latta, is that an accurate statement?

10 **A.** Yes.

11 **Q.** I want to look at the second paragraph under this first
12 bullet point, which is already up.

13 And it says that "Maintaining a diverse student body at
14 the Naval Academy promotes an essential exchange of differing
15 experiences and ideas critical to best educating midshipmen for
16 the roles and responsibilities that will be expected of them as
17 Navy and Marine Corps officers leading a diverse fleet
18 routinely conducting operations in a diverse world."

19 Dean Latta, my question for you is this: How does
20 maintaining a diverse student body at the Naval Academy promote
21 these objectives described in Plaintiff's Exhibit 31?

22 **A.** Well, from my perspective, if you're bringing in students
23 in our student body -- and, again, that's including all across
24 the nation with a wide range of backgrounds, experiences,
25 different socioeconomic factors, leadership, athleticism, what

1 have you -- then what you're creating right at the front end is
2 you're creating a student body that's interacting with students
3 they don't know and have to learn to get along with.

4 And it learns to promote their ability to develop into
5 leaders because they're having to relate to people that they
6 don't know and that they will end up interacting with. That's
7 the people that they're going to lead.

8 The Navy and Marine Corps represent the entire country
9 with a wide range of backgrounds and what have you. The way I
10 look at it, it comes back to is that they don't get to choose
11 who their roommates are, at least when they first get there.
12 So we get students from well-to-do families rooming with
13 students with low-income families, students from a remote place
14 like up in Alaska, whatever.

15 And I've just found that, by nature of all those different
16 backgrounds, they end up having to learn to --
17 socioeconomically -- or communicate with each other, and it
18 helps build trust and confidence and teamwork.

19 Q. Could we turn to the second-to-last paragraph in this
20 exhibit.

21 A. Yes.

22 Q. All right. And the bullet point here says, "Other points
23 that are relevant to the discussion."

24 Do you see that?

25 A. Correct.

1 Q. And this paragraph here, which I won't burden the Court
2 with reading into the record, is that paragraph accurately
3 reflecting the views of the Naval Academy today?

4 A. Yes.

5 Q. I'd like to now go back to the first page and discuss the
6 paragraph under the third bullet. Now --

7 THE COURT: Mr. Gardner, just for purposes of
8 completeness of the record, why don't you identify the title of
9 Plaintiff's Exhibit 31 exactly for the record so it's clear.

10 MR. GARDNER: I can do that every time, Your Honor.
11 I'm sorry. I was just trying to save us some time.

12 BY MR. GARDNER:

13 Q. So we're still on Plaintiff's Exhibit 31, and I'd like to
14 now ask you about the information in the paragraph under the
15 third bullet point which says, "The results of the use" --
16 sorry -- "The results of the use of affirmative action
17 policies."

18 This should be data showing the numbers.

19 Do you see that?

20 A. Yes.

21 Q. And this says that "With the consideration of race as a
22 factor in the admissions process and an expanded outreach
23 effort, the composition of incoming classes at the Naval
24 Academy has gradually increased from about 24 percent diverse
25 for the class of 2006 to nearly 41 percent diverse for the

1 class of 2026."

2 Do you see that?

3 A. Yes.

4 Q. Is that an accurate statement?

5 A. Yes.

6 Q. Now, Dean Latta, earlier, I believe with my colleague, you
7 testified that the Naval Academy has never conducted an
8 analysis to determine what impact the consideration of race has
9 on the racial composition of the class, correct?

10 A. That's correct.

11 Q. Why hasn't the Naval Academy ever conducted an analysis to
12 determine what impact the consideration of race has on the
13 racial composition of the class?

14 A. Well, I think one of the core issues is that, first and
15 foremost, we've incorporated a lot of race-neutral alternatives
16 in our process along with a lot of other hosts of factors. And
17 every year, I look at the incoming class. I look at the number
18 of students that matriculated through not only our prep schools
19 but direct entry.

20 And I don't feel confident -- or have never felt confident
21 because we'll still lag significantly in two of the most
22 largest groups of minorities that are in the Naval Academy and
23 out in the fleet in the officer corps, and that's African
24 American and Hispanic students.

25 We lag significantly behind the American population in

1 those groups. And we've had difficulty attracting both groups,
2 particularly African Americans, to become interested in the
3 Naval Academy. When I will get to the end of every cycle,
4 particularly with African American candidates, I get very few
5 that are actually qualified for admission.

6 So, statistically, it's a very small portion of the
7 incoming class, but it's not where we want to be in terms of
8 reflecting the demographics of American society.

9 Q. Dean Latta, based on your 23 years working in the
10 admissions office, do you have an understanding of whether the
11 consideration of race has actually had an impact on the racial
12 composition of the class?

13 A. I'm sorry. Say that again.

14 Q. Sure. Based on your 23 years working in the admissions
15 office, do you have an understanding of whether the
16 consideration of race has had an impact on the racial
17 composition of the class?

18 A. Well, certainly, it's helped increase the diversity of our
19 student body and what have you. And when I look at the
20 incoming classes, they all are succeeding and graduating at
21 very high rates, much higher than many other institutions
22 across the country. So I feel very comfortable that it's
23 actually helped.

24 Q. Dean Latta, based on your experience working in the
25 admissions office for the past two decades plus, do you have a

1 view as to what would happen if the Naval Academy could no
2 longer consider race in its admissions process?

3 A. Yeah. I would be very concerned and what have you,
4 particularly -- again, particularly if -- they're two of the
5 most difficult groups we've had in both attracting and to get
6 interested. I already have low application completion rates in
7 both groups. And I just -- I think it would actually put us
8 into a regression back to earlier days. And we would not be
9 doing what the Navy and the Marine Corps need us to do to for
10 graduating students to lead in the fleet.

11 Q. And just for clarity, when you say there would be a
12 regression, do you mean there would be a decrease in --

13 A. I think the numbers would drop dramatically, yes.

14 Q. Dean Latta, as dean of admissions at the Naval Academy,
15 have you been following the news about other universities and
16 college releasing their demographic information for incoming
17 classes?

18 A. Yes.

19 Q. What do you understand those college admissions numbers
20 reveals about the inability to consider race in their
21 admissions processes?

22 A. Well, almost every school I've seen in the news lately --
23 and particularly MIT, which has a very similar-type curriculum
24 as we would consider to be a competitor -- saw dramatic drops
25 in their incoming class this year, from what I've read in

1 recent news reports, same thing as our most difficult group to
2 attract here, African Americans. Harvard also had a big drop
3 in admissions also.

4 Q. I want to ask you one last question on the second page of
5 Plaintiff's Exhibit 31.

6 And you can keep it up exactly as it is. Thanks so much.

7 On the first full sentence on page 2 it states, "Further,
8 minority students have succeeded at USNA. Over the last
9 several years, minority students have graduated about
10 87 percent, which is roughly on par with the overall class
11 graduation rates."

12 Dean Latta, is that still an accurate statement?

13 A. Yes, to my knowledge.

14 Q. Now, do you recall on direct examination you were asked
15 some questions about language in institutional assessment
16 reports which were, I believe, Plaintiff's Exhibits 803 through
17 806?

18 Do you recall that?

19 A. Yes.

20 Q. All right. I'd like to take a look, if we could, at
21 Plaintiff's Exhibit 803. And I'd like to turn to page 2 of
22 that exhibit.

23 **THE COURT:** What exhibit number is this?

24 **MR. GARDNER:** This is Plaintiff's Exhibit 803, which
25 was addressed yesterday with my friend.

1 And if you could, Mike, could you blow up paragraph 4.

2 THE WITNESS: Correct.

3 BY MR. GARDNER:

4 Q. Now, you were asked about the heading, "Increase diversity
5 in the brigade of midshipman to reflect the demographics of the
6 Navy."

7 Do you see that?

8 A. Yes.

9 Q. But you weren't asked about the actual text, and I want to
10 ask you about that.

11 This says, "This goal supports the Naval Academy's
12 Strategic Plan 2030 in attract and admit talented young men and
13 women who reflect the diversity of our nation."

14 Dean Latta, is that language consistent with the Naval
15 Academy's goal?

16 A. Yes.

17 Q. Now, you also recall that on direct examination you were
18 asked some questions about the Boston Consulting Group's
19 document, which is Plaintiff's Exhibit 330.

20 Do you recall that?

21 A. Yes.

22 Q. Great. Why don't we take a look at the Bates ending in
23 2846 of Plaintiff's Exhibit 330.

24 Now, I believe my colleague noted that this slide
25 indicated that the Naval Academy alone has low leverage to

1 change composition of the overall fleet officer corps.

2 Do you recall that?

3 A. Yes.

4 Q. Dean Latta, to your understanding, do the numbers on this
5 chart reflect the demographics of the senior officer corps?

6 A. No, they don't.

7 Q. Is that significant to you?

8 A. Yes.

9 Q. Why?

10 A. Because the value of the Naval Academy education is
11 retention throughout -- throughout a service member's career in
12 the officer corps. And Naval Academy graduates tend to retain
13 at much higher rates, particularly at the 20-year mark and
14 beyond, and they're disproportionately represented in the O6
15 ranks and in the flag ranks.

16 Q. Do you know what percentage of the senior flag ranks are
17 comprised of Naval Academy graduates?

18 A. The last statistics I looked at, it was about 40 percent
19 of the flag officers were Naval Academy graduates.

20 Q. Do you know whether this chart on Plaintiff's Exhibit 330
21 reflects just the unrestricted line?

22 A. No. It -- and that's the mismatch here, is that the bar
23 graphs that were created were comparing them to the fleet in
24 general, and our charter is to graduate students into the
25 unrestricted line communities.

1 Q. So is it significant to you at all that this chart omits
2 the unrestricted line?

3 A. Yes.

4 Q. Why?

5 A. Why? I just think it's misrepresentative of what we're
6 trying to do here. And I know the -- again, the group was
7 given wide latitude to look at a lot of different things and
8 what have you, but they missed the core thing of providing a
9 comparison out there. Even though it was listed as a bullet
10 underneath, it gets missed if somebody doesn't actually read
11 the subtitle.

12 Q. Let's take a look at Plaintiff's Exhibit 41, which I
13 believe my colleague asked you about yesterday.

14 A. Yes.

15 Q. Now, this is one of the class composition charts, correct?

16 A. Correct.

17 Q. You recall you looked at several of these yesterday?

18 A. Yes.

19 Q. But I want to ask you one question that my colleague
20 didn't.

21 How are these class composition documents actually used,
22 if at all, in the admissions process?

23 A. They're just -- again, they're just used to brief the
24 superintendent on the status of the class. And in most cases,
25 they're run toward the end of the cycle.

1 One of the superintendents early on in my tenure there was
2 interested in comparing the incoming classes, and so then each
3 of the subsequent superintendents has been interested in the
4 data overall.

5 It doesn't affect how I continue to make offers. In fact,
6 most of these charts that you see here were made well after the
7 15th of April when we turned down most of the candidates. So
8 there really is little ability to make any change at that
9 point, even if it was used for that, which it isn't.

10 Q. Sorry. I did not mean to interrupt you.

11 Let's take a very quick look at Plaintiff's Exhibit 558,
12 which my colleague also showed you yesterday.

13 These are the office of admissions dean meetings. Do you
14 recall you saw several iterations of these? Do you recall
15 that?

16 A. Yes.

17 Q. Could we take a look at page 2 of Plaintiff's Exhibit 558.

18 And you recall you were asked some questions about the
19 various numbers on this chart?

20 A. Yes.

21 Q. How is the data used in this chart in making admissions
22 decisions?

23 A. It's not used to make decisions at all. It's just a
24 status chart. It's really a snapshot of where we were on that
25 particular date year over year.

1 Q. Thank you.

2 You can take that down. Thank you so much. I appreciate
3 it.

4 Dean Latta, I want to change gears and ask you some
5 questions about when the Naval Academy will stop considering
6 race in the admissions process.

7 Now, I believe you testified earlier with my friend, the
8 Naval Academy would discontinue the consideration of race when
9 it could achieve and maintain a racial composition reflective
10 of the general population; is that right?

11 A. That's correct.

12 Q. And I believe you were asked whether you had a range or a
13 number for when the Naval Academy would be willing to
14 discontinue the consideration of race. And I believe you said
15 that you did not. Is that right?

16 A. That's correct.

17 Q. And I believe you testified that you also did not have a
18 precise number or range; is that right?

19 A. That's correct.

20 Q. Why don't you have a range or a number in mind for when
21 the Naval Academy could discontinue the consideration of race?

22 A. Well, I think there's a couple of reasons.

23 Number one, as we continue not to be reflective of the
24 African American and Hispanic population in our student body
25 and we have -- but also the fact is we haven't consistently

1 maintained numbers. And I think part of it is maintaining
2 consistency.

3 But we know Hispanic and African American sailors and
4 Marines are well represented -- in fact, overrepresented -- in
5 the enlisted corps and they're poorly represented in the
6 officer corps. So we think it's important to continue,
7 particularly with those two groups.

8 But I think also the use of race and ethnicity has allowed
9 us to diversify our --

10 **THE COURT REPORTER:** Sir.

11 **THE WITNESS:** Let me start with we're deeply concerned
12 that we haven't been able to improve our representation of
13 African American and Hispanic students, which are well- or
14 overrepresented in the enlisted corps, and we don't have
15 confidence right now that we can maintain that level of
16 diversity that we think we need to have. And it actually has
17 helped improve some of our other groups by using race as one of
18 the factors in our admissions process.

19 **BY MR. GARDNER:**

20 **Q.** And so how do those concerns impact your inability to
21 provide, with precision, an end date?

22 **A.** Well, I think it's a concern. And, again, the
23 superintendent looks at the data along with senior leaders in
24 the Navy. And I haven't gotten any indications from any of
25 them that they feel comfortable with where we are at in either

1 admitting or graduating students at this point.

2 **Q.** I want to turn to our last topic together, Dean Latta, and
3 ask you some questions about the race-neutral alternatives that
4 the Naval Academy employs. But before we get to those specific
5 efforts, let me ask just a few background or general questions.

6 Does the Naval Academy have any challenges in encouraging
7 minorities to apply to the Naval Academy?

8 **A.** Yes. And it's actually been amplified after COVID. We've
9 always had a challenge with the African American and Hispanic
10 communities.

11 It starts with the lack of awareness. Many of them live
12 in areas of the country where there is not a presence,
13 particularly with the Navy and the Marine Corps. The people
14 who are influencing them are not knowledgeable about the Naval
15 Academy. Or if they know something about the military and the
16 student is a good student, they tend to steer them in other
17 directions.

18 Recent JAMRS surveys -- these are the surveys done by the
19 DoD -- indicates that many of the influencers now are not
20 encouraging their students to go into the military. And coming
21 out of COVID, for example, even though the military still has a
22 pretty high rating in many of the communities around the
23 country, that it's actually been diminished over time.

24 Many of the students don't think they can meet the
25 standards of the military lifestyle and -- I'm trying to think,

1 what are the other things that was in the survey?

2 But they just don't hold the military in as high esteem as
3 they did several years ago and what have you. But it's lack of
4 awareness. It's lack of preparation. Good students in many of
5 these areas and in these communities are being steered toward
6 other schools and what have you.

7 I've had personal experience walking into several schools,
8 particularly in New York City, where the counselors will not
9 want you to talk to the students if they know you're a military
10 organization.

11 If you go to a college fair, they want to put you down by
12 the enlisted recruiters instead of putting you next to the
13 other colleges and what have you.

14 So there's just challenges. And we have to work hard to
15 overcome them and what have you. And, of course, some of our
16 programs, like the Centers of Influence program, is helpful; it
17 just hasn't made a big impact and what have you.

18 But there's just a whole litany of things that -- and it's
19 not like we're not paying attention. We are making an overall
20 effort. But overcoming those barriers, I've had -- another
21 really honest example.

22 I've had several African American parents that refused --
23 have refused to consider their kids coming here until I can
24 send an officer who is African American back to talk to the
25 parent personally.

1 In another case I admitted a student from New York City
2 that we had to wait until she turned 18 because her parents,
3 who are Jamaican immigrants, did not want their daughter to go
4 to the Naval Academy; they wanted her to go to MIT where she
5 had a full ride. And even when she came in on I-Day, she came
6 down with her sister and what have you.

7 So they're not getting steered in the right direction and
8 there's lack of awareness across the board.

9 Q. And, Dean, I would just remind you once more, if you could
10 slow down just a little bit for the sake of the court reporter.

11 A. Oh, I'm sorry.

12 Q. Thank you.

13 I asked you questions about the propensity to apply.

14 Related question: Does the Naval Academy have challenges in
15 encouraging those minority students who do apply to complete
16 their applications?

17 A. Yes. And, again, many of them are open -- even when we
18 get them to open an application, their applications lag
19 significantly behind other groups that have high application
20 completion rates. We actually establish goals in our office to
21 work on application completion rates.

22 But, for example, last year when our overall application
23 completion rate for the class was about 33 percent, our African
24 American application completion rate was about 24 percent and
25 our Hispanic was slightly above that.

1 But when they open an application and you can't get them
2 to finish an application, then it's -- that's a lost
3 opportunity in there. Our staff has a very robust engagement
4 program to work with students and what have you.

5 And there's -- and, again, some of the reasons are the
6 parents, the educators, and then lack of understanding of all
7 of the requirements and what have you.

8 Q. I want to ask you a few very quick questions about the
9 Naval Academy's budget.

10 Where does the Naval Academy receive its funding from?

11 A. We're a federally -- obviously, we're part of the federal
12 government, and so that's where our funding comes from.

13 Q. And who allocates money to you?

14 A. We get our money through the Department of the Navy, and
15 it comes to the Naval Academy.

16 Q. Does the Naval Academy have multiple cost centers?

17 A. We do.

18 Q. What are some of the Naval Academy's cost centers?

19 A. So we have the academic dean of provost. And, obviously,
20 they do all the academic prep with the faculty and staff.

21 We have the commandant's cost center, which is essentially
22 our dean of students. And they have the oversight of the
23 leadership development and -- of all the midshipmen and what
24 have you.

25 There's the comptroller. There's human resources. We

1 have an information technology division, an athletic
2 department. And then us are all -- I think that kind of covers
3 all of them.

4 Q. Which is the biggest cost center at the Naval Academy?

5 A. The academic dean and provost.

6 Q. And I think you said admissions is a cost center, correct?

7 A. We are. We're probably the smallest cost center of the
8 group.

9 Q. Has the admissions office increased its outreach budget
10 over the past decade?

11 A. Yes. I don't recall what it was 10 years ago. Back in
12 fiscal year '21, it was about \$800,000 in appropriated money
13 and a little over a million dollars in nonappropriated money or
14 private philanthropy. And we've managed to increase it to
15 about 3.2 million this last year.

16 Unfortunately, with the increase in appropriated fundings,
17 we've lost some of our nonappropriated funding. That's private
18 philanthropy to support -- we get -- and the private
19 philanthropy, it's money that is provided to us that helps us
20 do a lot of our outreach.

21 Q. Why is the academic cost center the biggest cost center at
22 the Academy?

23 A. Well, obviously, they're teaching all the academic
24 curriculum. And, you know, when we think of academics, we're
25 thinking of math and science and English and languages and all

1 that.

2 But they actually -- part of that cost center is all the
3 leadership, ethics training that is provided to the midshipman
4 as well. So there's a big staff -- I think it's on the order
5 of about 600 people -- that work in that cost center versus the
6 less than 50 that work for me.

7 Q. All right. Let's dig into some of the race-neutral
8 alternatives the Naval Academy uses.

9 Mike, could we get DX106 up, please.

10 Dean Latta, do you recognize what has been marked as
11 Defense Exhibit 106?

12 A. Yes.

13 Q. What is it?

14 A. This is a report that we sent to the Naval Academy
15 Foundation. We do this yearly to show them some of the impact
16 of the private philanthropy that they provided to us.

17 Q. I'd like to take a look at the second paragraph, class of
18 2027.

19 And you'll see that in this second sentence here it
20 indicates that the office of admissions received 14,727
21 applications for admission, which included a 14 percent
22 increase in applicants overall.

23 Do you see that?

24 A. Yes.

25 Q. Do you know, Dean Latta, what accounts for this 14 percent

1 increase in applications?

2 A. Well, I think a big contributing factor is that we were
3 able to bring on an enrollment management company or marketing
4 firm, as you have, that has helped us do outreach. And so they
5 actually have been very aggressive. And, again, their
6 specialization is in internet, social media, and other
7 electronic platforms and what have you.

8 So they do -- they've had -- you know, we brought them on
9 a couple years ago, but that was the year that they started to
10 get fully engaged in what we were doing.

11 At the same time, if you back it up, coming out of COVID,
12 many schools across the country, but the service academies in
13 general, had big drops in applications.

14 And we were impacted very negatively in the prior years
15 because military recruiting in general, but the service
16 academies specifically, relies a lot on doing person-to-person
17 outreach in the local communities; and, obviously, we couldn't
18 get into the schools and what have you.

19 And even the years coming out of COVID, many school
20 systems have been reluctant to let our staff and the staffs of
21 the other academies back into the schools as well as the
22 enlisted recruiters as well.

23 But this year was a reflection where we had -- we were
24 able to get out fully. We had a more robust personal
25 engagement program, and our marketing partner was very helpful

1 in facilitating that increase.

2 Q. What is the name of the enrollment management company?

3 A. EAB.

4 Q. How much has the Naval Academy spent on this marketing
5 firm, EAB?

6 A. So we started with about an \$800,000 budget with a basic
7 contract for them. And with additional plus-ups and a renewal,
8 we're up -- going to be close to 2 million this year.

9 Q. Let's take a look at the next paragraph under "Admissions
10 Excellence."

11 And I'd like to take a look at the third paragraph and in
12 particular the last full sentence. And this paragraph goes on
13 to mention that almost 15 percent of the class are considered
14 first-generation Americans.

15 Do you see that?

16 A. Yes.

17 Q. Is that an accurate number?

18 A. Yes.

19 Q. It also states that 13 percent of the class were first in
20 family to attend college.

21 Do you see that?

22 A. Yes.

23 Q. Is that an accurate number?

24 A. Yes.

25 Q. It also indicates that 7 percent of the class is from

1 families where the primary language spoken at home was not
2 English.

3 Is that an accurate number?

4 A. Yes.

5 Q. And it also indicates that 11 percent of the incoming
6 class overcame some hardship or adversity growing up.

7 Is that an accurate number?

8 A. Yes.

9 Q. Dean Latta, do you know what has accounted for the
10 increase in these numbers here?

11 A. Well, I'd like to think the increase is because of our
12 expanded outreach across the -- across the country and
13 specifically to a lot of our underserved groups in gaining
14 interest as well our main outreach programs. We made a
15 concerted effort to get students in here from every
16 congressional district and to have representation from our
17 underserved groups. And I think that's helped facilitate the
18 numbers you see there.

19 Q. Let's turn to the next paragraph, which discusses the
20 summer STEM camp.

21 Do you see that?

22 A. Yes.

23 Q. Can you tell the Court what the summer STEM camp is.

24 A. The summer STEM camp is a program designed for ninth
25 through eleventh graders. It obviously -- one of the goals is

1 to increase interest in STEM disciplines because we are a STEM
2 school.

3 But it was primarily stood up to help do early outreach to
4 rising ninth, tenth, and eleventh graders across the country --

5 **THE COURT:** STEM, that stands for science, technology,
6 engineering, and mathematics, correct?

7 **THE WITNESS:** That is. Yes, sir.

8 **THE COURT:** All right. So just so the record is
9 clear, both sides have referred to STEM programs. I'm not sure
10 the record reflects what STEM stands for. It's science,
11 technology, engineering, and mathematics and that focus.

12 **THE WITNESS:** Yeah.

13 **MR. GARDNER:** Thank you, Your Honor.

14 **THE WITNESS:** Sorry, sir. We use it. It's one of
15 those acronyms.

16 **THE COURT:** That's all right. It's not just you that
17 have been doing that, but I noted yesterday -- I realized no
18 one has really talked about what STEM stands for.

19 **THE WITNESS:** Yes, sir.

20 So, again, we've started this program around 2008. And it
21 was intentionally meant to be an outreach program because we
22 found many students, particularly those from underserved
23 communities, were not taking classes that were needed to
24 prepare themselves either for a STEM school like ours or the
25 Naval Academy. So it was designed to help educate them.

1 But it's also run -- it's run by midshipmen in conjunction
2 with our faculty and staff. So it has done a phenomenal job
3 over the years in getting students' initial interest. And many
4 of the students end up applying to the Naval Academy when they
5 get into senior year.

6 **BY MR. GARDNER:**

7 **Q.** This notes that 837 students attended summer STEM and that
8 this reflected a 19 percent increase in the applications; is
9 that right?

10 **A.** Correct.

11 **Q.** Do you know how the Naval Academy was able to increase its
12 applications by 19 percent?

13 **A.** Yes. So part of this advertising program involved our
14 marketing partner, EAB Marketing. And they ran a pretty
15 aggressive program that included mail-outs, emails, text
16 messages.

17 They have connections with Cappex and other college
18 preparation programs and what have you and access to some
19 influencers called Greenlight and what have you. So they did
20 some aggressive across-the-board marketing for us as well.

21 We also complemented that, like we did with other
22 programs, by having our staff travel to specific areas of the
23 country to gain interest to students.

24 **Q.** And do you know, Dean Latta, how many students the Naval
25 Academy was able to bring to the STEM program or summer STEM

1 program this past summer, 2024?

2 A. So this past summer, we were able to expand the program
3 with the goal of about 990 students. And I don't remember the
4 exact number, but I think it was around 873 or so actually
5 attended.

6 This is a great program. The biggest challenge is that we
7 don't have the capacity to take many more students than we're
8 taking right now.

9 Q. Has the summer STEM program been successful in attracting
10 more interest from minority candidates?

11 A. Yes. We have a large portion of our students that attend
12 the STEM program -- I'm sorry -- that attend STEM programs are
13 minority students. And, again, we intentionally target some of
14 the underrepresented and underserved areas of the country in
15 doing so.

16 I believe this last year, over 35 percent of them were
17 minority students. And, again, females are another group that
18 we're interested in as well. So we used that as a mechanism to
19 get them interested to come to the program and the Naval
20 Academy.

21 Q. Let's take a look at the next paragraph, which discusses
22 summer seminar.

23 Dean Latta, what is summer seminar?

24 A. So summer seminar is a longstanding program. It actually
25 started back in the '70s under a different name, but it has

1 matured over the years. It is a program designed for rising
2 seniors, those going into their senior year.

3 And it's designed to give them kind of a taste of -- like
4 a five-day -- I think it's five or six days long -- taste of
5 midshipman life. It's actually run by the midshipmen. So they
6 get them up, and they run them through the daily routine of a
7 midshipman. That includes physical evolutions.

8 They go to workshops that include academic information.
9 They give them character-forming experiences. They take them
10 on the yard patrol class and what have you. Again, it's to
11 give them a broad spectrum of the Naval Academy.

12 The students that apply to this program -- apply to the
13 program all open a preliminary application, but the importance
14 of this program is to make sure we have representation from the
15 entire country and we have representation from all of our
16 underserved groups there as well.

17 So we make a concerted effort. We'll actually track
18 applications by congressional districts for this program. It's
19 not an admission to the Naval Academy, but it is very powerful.
20 In a given year, somewhere around 68 to 70 percent of them will
21 actually finish an application and be competitive for
22 admission.

23 Again, we're trying to bring in competitive candidates.
24 We don't always get it right, but it is a powerful program for
25 students.

1 And I should add, again, we talked about influencers. We
2 run parents' program in conjunction with this program in STEM
3 because we know we have to get to the parents, particularly
4 with our underserved groups, to convince them that the military
5 and the Navy and the Marine Corps in general are good programs
6 for their sons and daughters to attend.

7 Q. Dean Latta, this indicates that 6,343 applicants attended
8 and applications increased by 21 percent for summer STEM from
9 2022; is that correct?

10 A. That's correct.

11 Q. Do you know how the Naval Academy was able to increase
12 applications to summer seminar -- sorry -- I said summer
13 STEM -- summer seminar? Do you know how the Naval Academy was
14 able to increase applications to summer seminar by nearly
15 21 percent?

16 A. This was a similar effort, again, using our marketing
17 partner, EAB, along with staff travel and what have you.

18 I probably should mention also that, before these programs
19 go online in January for advertisement, we actually have a
20 program called OPINFO, which we may talk about at some point.

21 But OPINFO is a primary key where we send midshipmen out
22 in the community around Thanksgiving time. And one of the
23 goals of OPINFO is to advertise these programs to high school
24 students.

25 Q. Now, let's go to the next paragraph entitled "Strategic

1 Outreach."

2 And in the middle of this paragraph, it mentions that "The
3 efforts of the outreach office included expansion of social
4 media, upgrading virtual campus tours, search engine marketing,
5 texting, integration of smartphone technology, and the use of a
6 marketing consultant that specializes in internet electronic
7 outreach."

8 Dean Latta, have these various outreach efforts been
9 successful in increasing the number of applicants to the Naval
10 Academy?

11 A. I think my general sense is that all these things are
12 contributing to increased outreach. Many of these have come
13 online in the last two years; so it's going to take time to
14 determine their overall impact.

15 But the students today are very much into social media and
16 the internet. Many students are doing all their college
17 searches virtually; so that includes the virtual campus tours.

18 If you don't know what search engine marketing is. My
19 example might be that, if you go up on Google or Yahoo, one of
20 the other platforms, and you put in a STEM school, the people
21 who are doing search engine marketing, it'll bring your name
22 right up before everybody else.

23 So that's one of the areas that we think might make a
24 difference. We're still working on that and what have you.

25 And then, again, our staff has recently gotten smartphones

1 to use. So they use those to text candidates because, you
2 know, most students today, that's where everything is; it's on
3 their smartphone. We have students that are actually filling
4 out their entire application on their smartphone and not on a
5 computer in today's environment.

6 So this is all trying to keep up with the trends in
7 college admissions.

8 Q. Do any of the efforts described in this paragraph, Dean
9 Latta, encourage or focus on the encouragement of minorities to
10 apply to the Naval Academy?

11 A. Yes. And some of those are done directly by my staff
12 through their own work in their particular regions. But our
13 marketing partner, EAB, has been working on focus areas around
14 the country. Some of those are the rural areas where we've
15 actually given additional funding, but a lot of it is our
16 underserved communities.

17 Some of that is done through additional procurement of
18 names through the college board and ACT to advertise and what
19 have you. So they're actually trying to focus a lot of their
20 efforts. They're trying to track students from across the
21 country, but they're trying to put an additional focus on these
22 groups.

23 Q. Let's take a look at the paragraph entitled "Candidate
24 Visit Weekend."

25 Dean Latta, can you describe what the Candidate Visit

1 Weekend is.

2 A. So a program that is -- I won't say it's similar to summer
3 seminar, but during the year we have opportunities for students
4 to come and spend a couple of nights rooming with midshipmen
5 and going to class with them. Some schools call it a shadowing
6 program and what have you.

7 But we generally run about eight of these a year where the
8 students come in on a Thursday night and stay till Saturday,
9 and, of course, on Friday they're attending class with the
10 midshipmen. We give them an opportunity, for example, to take
11 the candidate fitness assessment on Saturday when they attend.

12 In the fall we focus almost exclusively on seniors who are
13 not -- who did not apply to summer seminar and were not able to
14 attend, and then in the spring we shift focus to more on
15 juniors to get them excited in visiting.

16 It has similar results to summer seminar. We see very
17 high application rates to these programs. And, again, part of
18 this is encouraging our students from across the country to
19 come.

20 Again, we -- this is the self-paid program, but we do
21 offer opportunities for scholarships for students who are
22 financially challenged.

23 Q. When you say there's similar results, to what extent has
24 the Candidate Visit Weekend resulted in an increased interest
25 by minority applicants in the Naval Academy?

1 A. It's been helpful. If they come to Candidate Visit
2 Weekend, regardless of their background, they're going to
3 complete their application, about 68 percent.

4 But we're actually trying to provide additional emphasis
5 to get our African American and Hispanic students there. And
6 that often results in having to provide scholarships because of
7 financial challenges and what have you. Again, it's a
8 need-based program, but that's generally where we find the
9 need.

10 Q. Let's turn to the next paragraph entitled "Centers of
11 Influence."

12 Dean Latta, what are the Centers of Influence?

13 A. So Center of Influence is a program designed to bring
14 influencers from local communities across the country to the
15 Naval Academy to help them learn more about the Naval Academy,
16 with the goal of them returning to their community and being
17 essentially a force multiplier for our school.

18 And that -- again, these are people that we think are most
19 influential with the students that are in high school.
20 Typically, they're college counselors, but we've had
21 principals, other community leaders, superintendents of
22 schools, JROTC. There's not a defined person who's in there.

23 We typically are trying to target specific areas of the
24 country where we don't get great interest in the Naval Academy.
25 If the person -- and then they engage the leaders here and they

1 talk to midshipmen and other staff members while they're there.

2 But if we do the program right, then they will return to
3 their local community and they will help influence those around
4 them. Sometimes their influence is not just on the students;
5 it's other educators or other community leaders to get them
6 interested in getting students interested in coming to our
7 school.

8 **Q.** In this section of the document it states that the program
9 is by invitation and is meant to engage influencers from
10 underrepresented areas and underserved groups across the
11 nation.

12 How does the Naval Academy actually go about inviting
13 participants to this program?

14 **A.** Well, we do it a number of ways. A lot of it comes from
15 our own staff who are trying to gain traction in specific
16 schools. And they've talked to some of these folks and have
17 tried to get them interested in students applying.

18 We get recommendations from our blue and gold
19 organization, is another way that it comes in. And there's a
20 number of other advocates.

21 Sometimes an influencer from a prior conference will
22 actually recommend two or three people from their same town or
23 community to come. So it comes in a lot of different forms for
24 inviting those that come.

25 **Q.** Has the Center of Influences -- or have the Center of

1 Influences been effective in encouraging more minorities to
2 apply to the Naval Academy?

3 A. Yeah. The results are a little bit undefined, but there's
4 anecdotal evidence. I've actually had a couple people work
5 with me -- work for me that actually got interested in the
6 Naval Academy because their principal or their college
7 counselor came back to their school after one of these
8 conferences and told them that they need to apply to the Naval
9 Academy.

10 And these are from areas that were not near the Naval
11 Academy. California was one area, for example. Another
12 student that came in from Illinois.

13 Q. Let's go to the next paragraph, which are "Congressional
14 Academy Days."

15 Dean Latta, can you describe what a congressional academy
16 day is.

17 A. Yeah. So one of -- this is an outreach effort that we
18 don't particularly control but we encourage highly. These are
19 members of Congress who run a local program and -- to gain
20 interest from students in their congressional district that
21 apply to all of service academies and what have you.

22 So if we attend one of these -- you know, West Point, Air
23 Force, for example. Merchant Marine and Coast Guard Academy
24 usually have representatives there and what have you.

25 But we encourage them to have them. And if they offer one

1 of these, we feel it's important that we participate in them
2 because this is -- in some ways when you can't get through the
3 influencers in the schools or their parents, if the kids show
4 up at one of these events the congressman has hosted, it gives
5 you another opportunity to engage them and get them interested
6 in coming to the Naval Academy.

7 Q. Have the Congressional Academy Days resulted in any
8 increased interest by minority applicants to the Naval Academy?

9 A. I haven't -- and, again, there's some anecdotal evidence
10 that it's making an impact, but some of the underrepresented
11 congressional districts we have on there, it hasn't really made
12 a major impact in some of those areas.

13 But we're essentially encouraging them and continuing to
14 try to make it work and make it a program that will be a viable
15 path.

16 Q. Let's take a look at the next paragraph, which is entitled
17 "Musical Groups."

18 Dean Latta, can you describe -- or can you explain what is
19 being described in this paragraph about musical groups.

20 A. So our best recruiters are usually our midshipmen who are
21 attending the Naval Academy. And we have -- I mentioned OPINFO
22 earlier, but one of the other programs that employs midshipmen
23 is to employ various musical groups at the Naval Academy. That
24 includes the men's and women's glee clubs and the gospel choir.

25 When these students travel, they do performances. And we

1 send them to key areas where we do poorly in general. New York
2 and Detroit are listed on here. They're two good examples of
3 places that they've been recently.

4 So when they go, it's just not a musical performance; it's
5 an interactive program maybe in several different schools or
6 different venues and what have you.

7 And my experience has been they have -- when these groups
8 travel, for a period of time afterward they have an impact of
9 interest of students in the local community to apply to the
10 Naval Academy.

11 And, again, you know, the mariachi band, obviously, is an
12 ensemble of Hispanic midshipmen who travel into venues where
13 they can help us attract students from the Hispanic community.

14 Q. Let's go to the next paragraph entitled "Virtual
15 Outreach."

16 Dean Latta, can you describe USNA's -- or the Naval
17 Academy's virtual outreach efforts?

18 A. They're actually pretty extensive, and they're evolving.
19 As I mentioned, it was probably started before COVID but has
20 dramatically expanded after COVID. Virtual outreach has become
21 very much a part of the college admissions.

22 So I mentioned all the stuff our staff does in travel.
23 They also do a lot of online engagement. These can include
24 online webinars with students that can have either small groups
25 of 4 or 5 or 2 or 300 students on the webinar at the same time.

1 We have a dedicated social media person in our office who
2 uses all the social media platforms that we're allowed to
3 use -- mainly Facebook, Instagram, and X -- to reach different
4 students. And texting is another part of the virtual outreach
5 as well. I don't think it's listed on here.

6 Same thing with our campus visit is a virtual outreach
7 program. We're actually getting a lot of new students
8 applying. So if the students go to the website and do a
9 virtual campus tour, they actually will fill out a form that
10 will allow us to continue to engage them afterward and what
11 have you. So we've had great interest in here.

12 Now, the one thing with social media, as most schools will
13 tell you, is you can develop a lot of followers and create very
14 positive images of your school. It doesn't necessarily
15 translate into increased applications or people completing
16 applications.

17 **Q.** I think you almost anticipated my next question.

18 To what extent have these virtual outreach efforts been
19 successful in increasing minority interest or applications to
20 the Naval Academy?

21 **A.** I'm not sure that I see -- again, we've been robustly
22 going at these for the last couple years. So I think it may
23 take some time. I just haven't seen a big increase,
24 particularly in our two groups that we're most challenged in
25 attracting, not only to apply but also to finish an

1 application.

2 Q. Let's take a look at the next paragraph, which refers to
3 operation information events. And I think you briefly touched
4 on this a little bit ago. You called it OPINFO; is that right?

5 A. Yes.

6 Q. What are Operation Information, or OPINFO, events?

7 A. So, again, this is a in-person program conducted by
8 midshipmen. As you can see here, on this particular year we
9 had 439 midshipmen go the week before or the week after
10 Thanksgiving.

11 And, essentially, we target them to go into different
12 communities across the country. And this one is very
13 expansive, obviously. And their goal is to get them into
14 schools or other venues where they can get in front of
15 students, including those that are currently applying, and help
16 counsel them on finishing their applications and what they do.

17 But, more importantly, they're advertising our summer
18 programs and also just the life of a midshipman as well. They
19 are a very powerful recruiting tool. They do a lot to help
20 facilitate application completion rates and, actually, interest
21 in our summer seminar and STEM programs.

22 A smaller component on that is listed on here. It's
23 called Mini-OPINFO, and these are actually a little more
24 targeted. We actually send them into communities where we are
25 challenged with applications. You can see here all these --

1 the inner city areas of all these places in here are areas that
2 we don't attract a lot of students and particularly minority
3 students.

4 So the idea here is to get them in here. These, again,
5 are done over three-day weekends in the fall and the spring,
6 such as Presidents' weekend and spring break. This one is paid
7 through private philanthropy and what have you. Again, it's to
8 help engage and get interest in students applying.

9 Q. Dean Latta, to what extent have the Operation Information,
10 or OPINFO, events been successful in encouraging more minority
11 students to apply to the Naval Academy?

12 A. I do see success with it. For example, I mentioned the
13 one year for summer seminar and STEM. I think it does as much
14 to keep students who are already engaged. I do think there's
15 some success in here, but it's been very hard to really measure
16 metrically.

17 Q. Let's go to the next paragraph, which is talking about
18 STEM events. Now, I think we've already talked about two
19 different type of STEM events.

20 So what STEM events are being referred to in this
21 paragraph?

22 A. So I think the focus here is to not talk as much about the
23 STEM camp that we run in the summer. We actually started that
24 program -- we wanted it to be like a summer sports camp because
25 there's limitations in the facilities at the Naval Academy.

1 We have had more interest than we've had the ability to
2 bring students there. So we've started a program at the end of
3 August, and it's not labeled here. We call it STEM 2. And the
4 students that were not -- did not attend STEM camp have an
5 opportunity to attend for that program.

6 It's in about its second year. So we're still trying to
7 figure out the impact of that program on getting students to
8 apply to the Naval Academy as well. But, again, we now have
9 other programs that we're expanding. We call them STEM
10 underway.

11 STEM Underway is where the faculty and midshipmen travel
12 to do STEM programs in targeted locations. And, again, you can
13 see these are all areas with large diverse populations and what
14 have you.

15 And then there's another program called STEM on Deck,
16 where we actually will bring groups of students from selected
17 cities. For example, we have one coming in this year from
18 Chicago -- and it's not just coming from one school; it's a
19 consortium of three or four schools in underserved
20 communities -- to the Naval Academy.

21 And, again, the focus may be a little bit on doing STEM --
22 getting them interested in STEM, but more importantly it's
23 getting them interested in the Naval Academy and what have you.

24 Q. Dean Latta, if you look at the last sentence on the STEM
25 events section, it says, "During the 2022 to 2023 academic

1 year, the office of admissions conducted STEM Underway programs
2 with students from school districts in Chicago, Illinois;
3 Pascagoula, Mississippi; Cleveland, Ohio; Dallas, Texas;
4 Atlanta, Georgia; Detroit, Michigan; Nashville, Tennessee; and
5 Philadelphia, Pennsylvania, with an increase of over
6 250 percent over last year's student engagement."

7 Two quick questions. The cities referenced here, do these
8 cities tend to have large minority populations?

9 A. Yes.

10 Q. And are you still using the STEM Underway programs
11 currently?

12 A. Yes.

13 Q. Have the STEM event programs resulted in increased
14 interest by minority applicants to the Naval Academy?

15 A. We've seen some movement. It just hasn't been able to be
16 measured metrically at this point.

17 Q. Let's go to the next paragraph, which is the INSPIRE
18 program.

19 Dean Latta, what is the INSPIRE program?

20 A. So this is a relatively new program. It has some
21 similarities to a candidate visit weekend. We actually modeled
22 this after a program being run at West Point to attract
23 minority students that they've run successfully for a number of
24 years.

25 What we try to do with this program -- and, again, we've

1 only been doing it for a couple of years -- is to attract what
2 we consider to be high-qualified minority students or people
3 who we think would be highly qualified in our admissions
4 process and get them to come to the Naval Academy for a program
5 that has a little more of a personalized experience for them
6 and a parent -- and a parent.

7 So we pay for them to visit the Naval Academy. And during
8 that program, much of the emphasis is engagement with minority
9 midshipmen, the admissions staff, and other key leaders at the
10 Naval Academy and what have you.

11 And I mentioned earlier that -- you know, that we've had a
12 really difficult time getting African American and Hispanic
13 students to complete their applications. So what we're seeing
14 on the early returns with this program is we have much higher
15 application completion rates for admission to the Naval
16 Academy.

17 And, again, this is an outreach program; so it's not an
18 admission at all. But it's designed to get the students and
19 their parents sold on attending our school.

20 **Q.** And it says here in the INSPIRE program, in the
21 second-to-last sentence, that "Coupled with a program held in
22 February 2022 in which 46 juniors attended, over 95 percent
23 completed their applications versus an average class of
24 32 percent, and 69 offers of appointment were made for the
25 class of 2027 or a preparatory program, NAPS or Foundation."

1 Dean Latta, is that an accurate statement?

2 A. Yes.

3 Q. In your opinion, has the INSPIRE program been successful
4 in encouraging more minorities to both apply for and complete
5 their applications?

6 A. Yes.

7 Q. Let's turn to page 5 of this document --

8 **THE COURT:** We'll stop now for a break -- for a
9 late-morning break for 10 minutes for the court reporter, and
10 then we'll start again in about 10 minutes.

11 Let's take a 10-minute recess.

12 (A recess was taken from 11:46 a.m. to 12:01 p.m.)

13 **BY MR. GARDNER:**

14 Q. Dean Latta, I'd like to continue on with Defendants'
15 Exhibit 106. And now I'd like to turn to page 5.

16 This paragraph describes "Trends in college admissions in
17 American society reflects a decline in students both graduating
18 from high school and then proceeding to attend college."

19 And it says that "These declines, which began during the
20 COVID-19 pandemic and have affected the service academies and
21 recruiters, resulting in a decline in interest for students
22 both starting and completing an application for admission.

23 "Department of Defense surveys further indicate that only
24 about 2 percent of the youth market today is of sufficient
25 quality and propensity to serve.

1 "Additionally, while their parents may have a positive
2 image of the military, they're often only moderately
3 knowledgeable about the military and are unsure if the military
4 would be a good fit for their sons and daughters."

5 Dean Latta, to your knowledge, is that an accurate
6 statement?

7 A. Yes.

8 Q. To your knowledge, are these challenges unique to the
9 service academies?

10 A. No.

11 Q. Is this statement particularly true for prospective
12 minority applicants?

13 A. Yes.

14 Q. What steps is the Naval Academy taking to address the
15 challenges in this paragraph, which is, again, Defendants'
16 Exhibit 106 on page 5?

17 A. Well, I think the -- we're doing everything we can. You
18 can see we have a pretty extensive outreach program. I've
19 actually requested additional funding in our budget to increase
20 the amount of support we're getting with our marketing partner
21 to do more aggressive -- or more assertive programs in the
22 local -- among particularly -- not only across the country --
23 and, again, this is not just the minority-related issues; it's
24 a problem with the American youth -- but to increase
25 applications across the board.

1 We actually are working very aggressively now on a program
2 in our office to work on getting students to complete their
3 applications. Some of that involved using midshipmen at the
4 Naval Academy to engage students and what have you.

5 We've requested additional billets through the prom
6 process to increase our social media presence because we know
7 that's where a lot of America's youth are. And that may
8 involve not only additional people to do stuff like Facebook
9 and what have you, but it's also developing short clips and
10 podcasts targeted toward today's youth as well.

11 We've offered and are starting to put some of our blue and
12 gold officers, who are volunteers, to pay them to do outreach
13 in a lot of different communities. Some of those are in the
14 very rural areas of the country with poor school systems.

15 But they -- again, if you get away from the Naval Academy
16 or a Navy base or another service academy, awareness is very
17 low. So getting them into -- out into the different parts of
18 the country is really, really important and what have you.

19 And, again, those are kind of some of the things that
20 we're doing. We are trying to expand some of our other
21 programs like INSPIRE and what have you. But that's all done
22 through private philanthropy. So we're dependent on the help
23 we might get from our foundation partners as well.

24 And then, again, engaging students who are coming to
25 sports camps.

1 And probably the last thing that's in the works that's
2 positive is we get a lot of groups of students who are doing
3 their college admissions search. So we're trying to stand up a
4 separate branch in our office that focuses solely on ninth,
5 tenth, and eleventh grade engagement.

6 So beyond the STEM efforts that we have now, this would be
7 to have somebody who's personally responsible for talking to
8 them early on. When they bring groups of their students in
9 here from across the country, like, at their spring break or
10 whatever, that person would help facilitate engagement with
11 faculty, staff, and midshipmen at the Naval Academy.

12 Q. Dean Latta, I want to discuss one final document with you,
13 and that is Defendants' Exhibit 28.

14 Dean Latta, do you recognize what has been marked as
15 Defense Exhibit 28?

16 A. Yes.

17 Q. What is it?

18 A. This is a PowerPoint presentation that my name is on but
19 there were others at the Academy helped prepare that we were
20 providing to senior Navy leadership. I believe, if I remember
21 correctly, it came at the request of the HASC or one of the
22 other groups in Congress.

23 Q. Does this reflect the Naval Academy's diversity and
24 outreach efforts?

25 A. Yes.

1 Q. I want to go to the second page, entitled "The Naval
2 Academy's Initiatives to Increase Diversity."

3 Now, on this page, Dean Latta, there are six bullet points
4 with various initiatives the Naval Academy has undertaken with
5 respect to increasing diversity.

6 Do you see that?

7 A. Yes.

8 Q. Could you walk through the initiatives that we've not
9 already covered? So, for example, what is the first bullet
10 point about the visits to the Navy and Marine Corps units?

11 A. Well, we've just found over time that a lot of our
12 enlisted sailors and Marines come from these communities. And
13 maybe I'll clarify a little bit.

14 The title of this brief was "Title I Schools." So these
15 schools are often in our underrepresented congressional
16 districts in disadvantaged areas of the country, but they're
17 receiving federal funding so that students in those areas --
18 I'm sorry. I'm not sure if it's all federal funding, but they
19 get additional funding to provide a good education so the
20 students could proceed on to college and what have you.

21 And the reality is that we haven't necessarily included --
22 targeted these schools, but we found that we've actually been
23 going to a lot of these schools over time.

24 But in terms of this effort with sailors and Marines, a
25 lot of the sailors and Marines that we engage come from many of

1 these types of schools and enlisted for various reasons into
2 the Navy and the Marine Corps.

3 So we -- believe it or not, engaging them and getting them
4 interested to come to the Naval is important because we might
5 eventually send them back to the same school they came from, if
6 we were able to admit them to help advertise the Naval Academy
7 in those types of schools and what have you.

8 Q. Now, the second bullet point here, the expanded outreach
9 to potential diverse applicants using the Naval Academy's
10 summer seminar and INSPIRE programs and STEM camp for high
11 school students, that's what you were referring to earlier in
12 your testimony, correct?

13 A. That's correct.

14 And going forward again, this brief, I think, was prepared
15 this last summer. We are -- you know, so part of our program
16 for next year, we want to make sure we're looking at these
17 schools when we're looking to admit students into all these
18 programs.

19 Q. And I think we've already discussed the second and third
20 bullet point, but what we haven't discussed yet is the
21 consideration of life experiences, cultural fluency, and
22 socioeconomic status in the application process.

23 Dean Latta, what is that referring to?

24 A. Again, this is an emphasis to the leadership that we're
25 continuing to look at the broad spectrum experiences that many

1 of these students bring in. We're already doing a lot of that
2 already.

3 But the renewed emphasis on their life experiences,
4 their -- cultural fluency, we're looking at the impact that
5 their heritage has had on their moral upbringing and how it's
6 inspired them and what have you, as well the socioeconomic
7 status.

8 And, again, the Title I schools often have many
9 socioeconomically disadvantaged students in their schools.

10 **Q.** Let's turn to page 3 of this PowerPoint presentation,
11 which, again, is Defendants' Exhibit 28.

12 Now, again, I think some of these efforts, we've already
13 discussed. So could you identify for the Court or explain to
14 the Court those initiatives that we've not yet discussed.

15 **A.** So we -- we probably haven't talked about how we do visits
16 to schools. We have a small staff. So we can't -- we can't be
17 everywhere all the time, and sometimes we get a lot of help
18 from our BGOs.

19 But the reality of it is that, when our staff does travel,
20 we try to target them into the underrepresented congressional
21 districts and underserved populations.

22 So within that group, we try to focus on schools that are
23 providing college preparatory programs, and included in this
24 are a lot of Title I schools. And, again, this is intertwined
25 with other efforts which might include getting the educators to

1 the Naval Academy for a Centers of Influence visit so that we
2 can retain that as kind of one of -- we call it kind of the
3 family of schools-type thing.

4 If we generate interest initially and we can maintain it,
5 then maybe we can develop kind of a pipeline of interest in
6 applying to the Naval Academy out of that particular school.
7 We have it with many schools across the country. Where we've
8 had so much interest in the Naval Academy over the years, we
9 really don't have to try very hard.

10 That's not this focus, but that's what we're trying to go
11 with some of these schools. And then -- oh, I'm sorry.

12 Q. Please, please.

13 A. The next one was the admissions forums. So we didn't talk
14 about our road shows. These are where we have staff -- so in
15 addition to doing school visits, we try to get into these
16 communities into a common venue at a time that we think they
17 can get there. So it might be on a weekend or on the right
18 night after school and what have you.

19 And, again, we'll broadly advertise these things through
20 extensive mail-outs. Social media oftentimes is used in the
21 congressional office to advertise the program. And, again --
22 and our staff travels to do these things.

23 They were all done in targeted areas across the country
24 last year. And, again, in the same vein, we'll continue to do
25 that as well.

1 At these programs, we always bring in midshipmen. When we
2 can, we try to get the local members of Congress or their staff
3 to attend, and we have.

4 But advertising them is an extensive program that involves
5 a number of different approaches that include social media,
6 texting, email, call-outs, and what have you.

7 Q. Dean Latta, are you familiar with the Congressional
8 Minority Caucuses?

9 A. I'm sorry. Say that again.

10 Q. The Congressional Minority Caucuses, are you familiar with
11 those?

12 A. Yes, I am.

13 Q. What are the Congressional Minority Caucuses?

14 A. Well, there's three that I've actually engaged with, the
15 Congressional Black Caucus, the Congressional Hispanic Caucus,
16 and there's an Asian caucus also.

17 I've actually spent time talking to many of these. In
18 prior years, we've actually gone down to the office to talk
19 directly to the congress member. In some cases, it's resulted
20 in talking to the staffer.

21 But a lot of it is to get in to talk to them and try to
22 help understand what's going on in their local community and
23 help them understand what the Naval Academy and service in the
24 Navy and Marine Corps is all about and see if we can come to a
25 common point where they can become an advocate for us or

1 actually open doors for us in the local community.

2 Q. Dean Latta, have you found that your interactions with the
3 congressional minority caucuses has been successful in getting
4 those districts to nominate more minority applicants?

5 A. Not particularly. I've had a couple -- I actually have a
6 couple that have been successful because the member has become
7 an advocate of the military. Many of them have been very good
8 at being warm and talking to us. It hasn't necessarily
9 translated into effort.

10 I don't know the reasons for it. I suspect in many cases
11 they have other challenges in their local community, and that
12 often gets the focus of most of their attention.

13 Q. I'd like to turn to page 6 of this PowerPoint, which is
14 Defendant's Exhibit 28.

15 And this lists the U.S. Naval Academy's race and ethnic
16 makeup by class. Do you see that?

17 A. Yes.

18 Q. And here this indicates that in 2024 the percentage of the
19 class that was Black was 5 percent; is that right?

20 A. Correct.

21 Q. And then that number jumps to 6 percent for the class of
22 2025; is that correct?

23 A. Yes.

24 Q. And remained 6 percent for the class of 2026; is that
25 correct?

1 A. Correct.

2 Q. And then jumped to 8 percent for the class of 2027?

3 A. Yes.

4 Q. Now, Dean Latta, to your understanding, are those numbers
5 accurate?

6 A. Yes.

7 Q. Do you have any view as to what is causing this general
8 increase in the percentage of Black students admitted to the
9 Naval Academy?

10 A. I hope it's our outreach efforts. It's not a big
11 increase, but it's moving in the right direction.

12 Q. In considering the racial and ethnic composition of the
13 class, does the Naval Academy set any targets or goals?

14 A. No.

15 Q. All right.

16 We can take this slide down.

17 Now, Dean Latta, on direct examination plaintiff's counsel
18 took you through some documents reflecting the tracking of race
19 and ethnicity during the admissions cycle.

20 Do you recall that?

21 A. Yes.

22 Q. And just to close the loop on this, why does the Naval
23 Academy track the race and ethnicity of admitted students
24 during the admissions cycle?

25 A. Well, again, we meet weekly. And we're always -- again,

1 our weekly meetings are designed to assess where we are in each
2 admissions cycle, what the efforts of the admissions board are,
3 where we are with slate review, and all the other stuff.

4 So they're really just status reports to help us
5 understand where we're at and maybe where additional emphasis
6 needs to be made, particularly with our staff.

7 One of the things we are very big on is getting them to
8 work on getting applications completed. So those weekly status
9 reports help us look at each of the individual regional
10 directors and the regional teams and see where they're
11 succeeding and where they're not. Oftentimes, it results in a
12 conversation of, you know, "Where do we need to work to
13 improve?" and what have you.

14 They also inform -- much of that information often gets
15 briefed to the superintendent. And it's designed to inform the
16 superintendent of our collective efforts in the office.

17 Q. I'm going to ask you a very few questions or quick
18 questions about the Coast Guard Academy.

19 Dean Latta, do you know whether the Coast Guard Academy
20 has a nominations process?

21 A. No, they do not.

22 Q. Do you know how large the Coast Guard Academy classes are?

23 A. They generally bring in a little bit under 300 students
24 per year.

25 Q. And how many students does the Naval Academy bring in a

1 year?

2 A. We're -- we -- we'll say a little bit under 1,200 if you
3 include the international cohort that is admitted in a yearly
4 basis.

5 Q. Dean Latta, how, if at all, do those differences inform
6 your views about whatever race-neutral alternatives the Coast
7 Guard Academy may have employed nearly 15 years ago, whether
8 those would be useful for the Naval Academy today?

9 A. Its difficulty seeing that it's an apples-to-apples
10 comparison. They're a much smaller school. They don't have to
11 be concerned about nominations and where students are being
12 admitted.

13 And, again, the congressional nomination process is like a
14 competition to get into the Naval Academy because every student
15 first competes in the local congressional district. The Coast
16 Guard Academy doesn't have to worry about any of that.

17 Q. We have done -- we have had a lot of discussion over the
18 past two days about the RABs, or recommendations of the
19 admissions board.

20 Do the RABs themselves reflect race-neutral alternatives?

21 A. Yes.

22 Q. In what way?

23 A. Because the admissions board has the ability to use those
24 to provide additional credit to their whole-person multiple,
25 their score, that is eventually used for making offers of

1 appointment.

2 **Q.** Dean Latta, given your time in the admissions office over
3 the past 22 years, has the consideration of all of the
4 race-neutral alternatives that we just discussed by themselves
5 been sufficient to achieve the level of diversity the Naval
6 Academy seeks for its classes?

7 **A.** No, I don't think so. Again, our -- I think it's been
8 helpful in improving the overall diversity of the incoming
9 class, but when you look at where we're challenged with our two
10 largest minority groups, we're still lagging where we want to
11 be.

12 **MR. GARDNER:** Thank you. I have no further questions.
13 I pass the witness.

14 **THE COURT:** Thank you, Mr. Gardner.
15 Mr. Strawbridge, redirect.

16 **REDIRECT EXAMINATION**

17 **BY MR. STRAWBRIDGE:**

18 **Q.** Hello again, Dean Latta.

19 **A.** Hi.

20 **Q.** I'd actually like to start where I think your presentation
21 left off.

22 This is the chart that I think Mr. Gardner was just
23 showing you.

24 **A.** Yes.

25 **Q.** And in the listings that you gave for the percentages of

1 Black or African American students, the numbers are listed here
2 for a number of classes, correct?

3 A. Correct.

4 Q. And, for example, you have 90 listed for the class of
5 2027?

6 A. Yes.

7 Q. But that's not the number of admitted students to the
8 Naval Academy in 2027 who identify as Black, is it?

9 A. I -- this was prepared, I think, by our institutional
10 research; so I will -- I have to take that on its face value, I
11 think.

12 Q. Oh. You could not have asked for them to prepare a
13 different chart that showed things a different way?

14 A. For example?

15 Q. You could have prepared them to be -- I don't know --
16 consistent with the class portraits that the Academy generates
17 at the end of every admissions cycle?

18 A. Possibly, yes.

19 Q. And let's just look at one of those class portraits from
20 the class of 2027. That is Plaintiff's Exhibit 530 -- I'm
21 sorry. One second. This is Plaintiff's Exhibit 520.

22 We have some demographic information in the corner here.
23 And here we can see the 90 that is listed there for African
24 American. But we also see another number, which is 146,
25 correct?

1 A. That's correct.

2 Q. And 146 is the number of admitted students to the Naval
3 Academy for the class of 2027 that identify at least in part as
4 African American, correct?

5 A. Correct.

6 Q. It includes the multiracial students, right?

7 A. Correct.

8 Q. Students, for example, who would have a Black parent and a
9 White parent, like former President Barack Obama, correct?

10 A. Correct.

11 Q. But you didn't put that number on this chart, correct?

12 A. No. But the number 90 is consistent between both -- the
13 number in parentheses on the class portrait is additional
14 information we provide to students so that -- so those who are
15 multicultural will know that there's additional students.

16 The numbers on the right are -- if you notice, they don't
17 add up all the way up and down. We're well aware of that. But
18 the numbers on the left are the ones that institutional
19 research tracks for reporting to the Navy. And we do put
20 multiple races on both places.

21 So the number 90 -- the number that multiple races is
22 reflected on the chart that we gave in the Title I brief.

23 Q. When you testified in response to your questions from
24 Mr. Gardner that the number of African American students at the
25 Naval Academy was lagging behind society in general, were you

1 thinking about the -- the 6 or 8 percent number or were you
2 thinking about a number that includes multiracial students?

3 A. No, we're -- again, we're looking at where African
4 Americans are represented in American society, and the census
5 shows that it's a much larger portion than we're actually
6 admitting.

7 Q. Is it your testimony that it is a much larger portion if
8 you count the number of students at the Academy who identify as
9 multiracial and part African American? Is that your testimony?

10 A. Say the question again, please.

11 Q. Are you testifying that there's a much larger percentage
12 of African Americans in the United States compared to the Naval
13 Academy if you count students who identify at least in part as
14 African American?

15 A. I think that's kind of an apples-to-oranges comparison
16 because in the census it also reports multiple races as well.

17 Q. Do you think that the percentage of multiracial applicants
18 at the Naval Academy, for example, in the class of 2027, is
19 greater or smaller than what the census reports?

20 A. I haven't looked at the numbers, but they're probably up
21 there.

22 Q. Okay. You haven't looked at the numbers?

23 A. Not specifically, no.

24 Q. I now want to talk to you about the report by the Boston
25 Consulting Group.

1 A. Yes.

2 Q. Mr. Gardner asked you a few questions about this, correct?

3 A. Yes.

4 Q. And I think -- I actually wrote it down because we have
5 the great realtime feed -- that you testified that you thought
6 that the chart on page 37 of this document was misleading
7 because it omitted the percentage of Naval Academy graduates
8 who joined the unrestricted line?

9 A. No --

10 Q. That is what you said, is it not?

11 A. That is.

12 Q. Okay. So I just want to look at a couple things here.

13 First of all, you agree with me that Scenario A here
14 specifically notes that the United States Naval Academy
15 generates approximately 28 percent of URL officer commissions,
16 correct?

17 A. That's correct.

18 Q. And that is the number that actually matches your
19 declaration in this case too, correct?

20 A. The point I was making to Mr. Gardner is the bar graph
21 above that should have reflected our comparison to the URL. I
22 did not deny the fact that the 28 percent was listed in the
23 bullet below. In fact, I actually think I might have said that
24 when he asked me.

25 Q. Well, let's look at Scenario B as well, correct?

1 A. Correct.

2 Q. Scenario B notes that -- proposes a scenario that the
3 Naval Academy might match the overall representation within the
4 enlisted ranks of the Navy, correct?

5 A. Correct.

6 Q. And if you look down there, it notes that even if the
7 United States Naval Academy graduates mirrored fleet enlisted
8 composition, 52 to 48 percent, this would only have a 5 percent
9 impact on fleet officer corps in total, given that the USNA
10 only represents about 30 percent of officer commissions,
11 correct?

12 A. That's correct.

13 Q. 30 percent is -- about 30 percent is referring to the
14 unrestricted line, correct?

15 A. I would assume so. They didn't specify, apparently.

16 Q. You know how many graduates of the Naval Academy go to the
17 overall Navy officer corps as opposed to the unrestricted line,
18 right?

19 A. What do you mean by that?

20 Q. Isn't it about 20 percent? Isn't that what you said in
21 your declaration?

22 A. In the declaration, we said 20 -- yeah, that's correct.

23 Q. And it's 28 percent for the unrestricted line, right?

24 A. Right.

25 Q. Which is about 30 percent, just like it says on

1 Scenario B, correct?

2 A. Correct.

3 Q. You talked a little bit this morning about the slate
4 review committee, right?

5 A. That's correct.

6 Q. The slate review committee is obviously an important part
7 of the admissions process?

8 A. That's correct.

9 Q. And we all agree that there are times in the slate review
10 committee where race might be used as one factor in considering
11 an applicant, correct?

12 A. That's correct.

13 Q. And particularly in considering whether or not they should
14 be elevated to a slight winner over somebody with a higher WPM?

15 A. Correct.

16 Q. I need to slow down my talking for Ms. Thomas's sake. I'm
17 going to try to do that.

18 **THE COURT:** Ms. Thomas knows, coming into my
19 courtroom, she has to keep up with a fast pace anyway. So
20 that's why she's one of the best court reporters.

21 Correct, Ms. Thomas?

22 So she's good.

23 **MR. STRAWBRIDGE:** I'm trying my best not to make her
24 job any harder.

25 **THE COURT:** I'm very reluctant to ever criticize

1 lawyers for speaking too quickly, I can assure you.

2 So go ahead, Mr. Strawbridge.

3 **BY MR. STRAWBRIDGE:**

4 Q. You agree, Dean Latta, that when the slate review
5 committee is looking at candidates who are competitive for
6 admission within a particular slate, they will pull reports of
7 candidates whose whole-person multiples are within 4,000 points
8 of each other?

9 A. That's a general rule of thumb, that's correct.

10 Q. Okay. Dean Latta, I now want to talk briefly about the
11 admissions board materials that we've looked at a fair amount.

12 A. Okay.

13 Q. We've established that the admissions board receives
14 training every year, correct?

15 A. That's correct.

16 Q. And that's because there are new members who come on the
17 admissions board every year?

18 A. That's correct.

19 Q. And they need to be trained, correct?

20 A. That's correct.

21 Q. And when they get these instructions, they get instructed
22 on the process for whole-person qualification?

23 A. That's correct.

24 Q. And in August 2022 before this case was filed, the slide
25 deck shown to the board included this slide.

1 Do you remember looking at this exhibit with Mr. Gardner
2 on your direct examination?

3 A. Yes.

4 Q. This is DX79. This is the document that he used with you
5 on direct examination, correct?

6 A. That's correct.

7 Q. And you would agree with me, Dean Latta, that this is the
8 same slide from the same presentation that appears in
9 Plaintiff's Exhibit 491?

10 And particularly, this slide that appears on page 97,
11 right? These are the same slides?

12 A. Yes.

13 Q. All right. So on the left we have Defendant's Exhibit 79;
14 on the right we have Plaintiff's Exhibit 491.

15 Both of these slides describe one factor in the assessment
16 of the whole person as ethnic heritage, racial and ethnic
17 diversity, correct?

18 A. Correct.

19 Q. And you agree with me that someone's ethnicity or race is
20 something they are born with, right?

21 A. Yes.

22 Q. You cannot change your race or your ethnicity, correct?

23 A. Correct.

24 Q. And that's different than, say, the bullet below, which is
25 language fluency or English as a second language, right?

1 A. Correct.

2 Q. Nobody is born knowing any language, correct?

3 A. Correct.

4 Q. It's something that you might become fluent in through
5 experience or study, right?

6 A. I guess. Yes.

7 Q. Now I would like to show you something that the Department
8 of Justice produced to us at about 9:00 p.m. last night.

9 A. Okay.

10 Q. This is the admissions board training for 2024, correct?

11 A. Correct.

12 Q. I'm sorry. This is Exhibit P813. It's marked for
13 identification at the moment.

14 This training would have taken place in the last month or
15 so?

16 A. Yes.

17 Q. Do you know what date in particular?

18 A. It was the Thursday -- I think it was the 20th of August
19 or so.

20 Q. Okay.

21 A. I might be off by a day.

22 Q. I want to go to page 2022 of this slide. This is a very
23 similar slide to the one that was in the training materials
24 that you talked about with Mr. Gardner on direct, correct?

25 A. That's correct.

1 Q. It has virtually the identical set of bullets, correct?

2 A. That's correct.

3 Q. Except there's a change here, right?

4 A. That's correct.

5 Q. The bullet point that used to refer to ethnic heritage,
6 racial and ethnic diversity, now simply says "Cultural
7 fluency," correct?

8 A. That's correct.

9 Q. You would also agree with me, Dean Latta, that no one is
10 born fluent in any culture, correct?

11 A. Correct.

12 Q. You learn it as part of your life's experiences, correct?

13 A. That's correct.

14 Q. For example, a White Mormon who grows up in Salt Lake City
15 and goes on a mission trip to Japan might learn and become
16 fluent in Japanese culture, correct?

17 A. That's correct.

18 Q. And that has nothing to do with that individual's race or
19 ethnicity, correct?

20 A. That's correct.

21 Q. And I assume, Dean Latta, you would never assume that a
22 Black man who grew up in Queens in the 1970s shares the same
23 culture of another person who is Black but from Oregon, right?

24 A. That's correct.

25 Q. So racial and ethnic heritage and cultural fluency are

1 very distinct concepts, are they not?

2 A. I assume so, yes.

3 Q. But according to you, if I understand your testimony
4 yesterday correctly, the board always understood that ethnic
5 heritage really meant something like cultural fluency, right?

6 A. No. I think what my testimony was is that we're looking
7 for how -- the impact of their shared experiences have played
8 on their moral upbringing and development and their diverse
9 experiences.

10 Q. Why did you change this slide?

11 A. I was --

12 MR. GARDNER: Your Honor, at this point we do have an
13 objection that the disclosure of that information calls for
14 privilege.

15 I am completely happy to have the dean say that, but my
16 understanding is that this change was the result of the
17 direction of counsel, not the Department of Justice.

18 THE COURT: Due to the advice of counsel? It's
19 privileged.

20 And move on to the next topic.

21 MR. STRAWBRIDGE: Yeah. If that's the understanding,
22 we will move on to the next topic.

23 BY MR. STRAWBRIDGE:

24 Q. You did not tell us that this document was changed in your
25 testimony yesterday, did you?

1 A. No, I did not.

2 Q. Even though you did tell us about some new guidance to the
3 board to provide a specific RAB for socioeconomic diversity,
4 right?

5 A. That's correct.

6 Q. And I believe you told us that you made the change to
7 allow for a specific RAB for socioeconomic diversity because
8 you saw a lot of variance in how the board was applying the
9 existing guidance about hardship and adversity RABs?

10 A. That's correct.

11 Q. How long has the slide on the left that used ethnic
12 heritage, racial and ethnic diversity been in the board
13 training materials?

14 A. I'd say for the last several years.

15 Q. For a number of years?

16 A. Yes.

17 Q. All right. Dean Latta, we've had a lot of back-and-forth
18 about just how race can be used in board qualification the last
19 couple of days?

20 A. Yes.

21 Q. But I do think we all agree -- and I understand your
22 testimony during your direct examination correctly -- is that
23 it can sometimes be one factor in designating a candidate as an
24 early notify by the board?

25 A. That's correct.

1 Q. And I think you testified earlier today that early
2 notification is actually a pretty important tool for the board
3 because I believe you said a lot of highly competitive
4 applicants apply at the very beginning of the admissions cycle?

5 A. That's true.

6 Q. And the Naval Academy needs to be able to get out there
7 and compete with other academies or elite colleges that have
8 early admissions decision processes?

9 A. Yes.

10 Q. And isn't it true, Dean Latta, that over 80 percent of the
11 students who are admitted to the Naval Academy are designated
12 early notify?

13 A. I don't know that I have that number.

14 Q. That number is tracked in the data that was produced in
15 this case.

16 A. I haven't -- I haven't tracked the difference between
17 early notifying and qualified over the years; so...

18 Q. But I'm asking is it tracked somewhere in the data at the
19 Naval Academy?

20 A. I -- I don't know -- I'm sure somebody could try to run a
21 report and try to -- we changed systems. But I don't -- that
22 number seems actually very high.

23 Q. Okay. Well, you can probably leave it on that.

24 MR. STRAWBRIDGE: Before we dismiss Dean Latta, the
25 plaintiffs would like to move some exhibits into the record, as

1 soon as the Justice Department does not object.

2 **THE COURT:** Sure.

3 **MR. STRAWBRIDGE:** First of all, we'd like to move to
4 admit the institutional assessment reports that both parties
5 used --

6 **THE COURT:** What is the plaintiff's exhibit number?

7 **MR. STRAWBRIDGE:** These are Plaintiff's Exhibits 803,
8 804, 805, 806. I used them with Dean Latta yesterday, and
9 Mr. Gardner used them today with Dean Latta.

10 **THE COURT:** Under our local Rule 107.5, they're
11 essentially admitted at this point anyway, Mr. Strawbridge.
12 But that's fine. That's fine.

13 **MR. GARDNER:** That is my understanding as well.

14 But we have no objection.

15 **THE COURT:** That's fine.

16 **MR. STRAWBRIDGE:** We would also like to move -- and we
17 will add it to the exhibit list -- what's going to be P810
18 through 814, which are the documents that were produced by the
19 Justice Department last night.

20 **MR. GARDNER:** No objection, Your Honor.

21 **THE COURT:** Plaintiff's Exhibits 803, 804, 805, 806,
22 810, 811, 812, and 813 are admitted into evidence.

23 **MR. STRAWBRIDGE:** Your Honor, nothing further.

24 **THE COURT:** All right. Thank you.

25 Is there any recross just on these --

1 **MR. GARDNER:** Very, very brief. I just want to
2 clarify one thing for the record.

3 RE CROSS-EXAMINATION

4 BY MR. GARDNER:

5 **Q.** Dean Latta, if I understood correctly, I believe
6 Mr. Strawbridge asked you if 20 percent of Naval Academy grads
7 go to the restricted line.

8 I understood earlier you told the Court previously that
9 95 percent of graduates go the unrestricted line. And so I
10 just wanted to see if you could clarify for the Court what
11 percentage of Naval Academy grads go to the unrestricted line.

12 **A.** Maybe we're all getting mixed up in the numbers.

13 **THE COURT:** I think it might be good for the record if
14 we go through restricted line, unrestricted line, flag rank.
15 There's a lot of spinning going on here.

16 The point is that there's a stage as to restricted line,
17 there's an unrestricted line, and there's a line in his
18 declaration that relates to flag rank.

19 **MR. GARDNER:** Right. So let's --

20 **THE COURT:** In his declaration, for example, which has
21 not been a subject yet, is that 40 percent of all flag officers
22 in the United States Navy are graduates of the Naval Academy.
23 That hasn't been discussed, but that's in his declaration as
24 well.

25 So I think we need to go step by step now and clarify

1 restricted line, unrestricted line, flag rank line, up the
2 chain you go.

3 **MR. GARDNER:** That's fine. And, Your Honor, just to
4 be clear, he did say on direct today that 40 percent of Naval
5 Academy grads go on to be the senior flag officers. But I'll
6 get that out again.

7 **THE COURT:** I think it's important for the record to
8 clarify this.

9 **MR. GARDNER:** But let's do it one step at a time.

10 **BY MR. GARDNER:**

11 **Q.** Dean Latta, what percentage of Naval Academy grads
12 graduate into the unrestricted line?

13 **A.** 95 percent.

14 **THE COURT:** And the unrestricted line is what?

15 **THE WITNESS:** Sir, what you would consider to be the
16 warfighting communities of the Navy. They're the people who
17 drive the ships. They're COs, aviation squadrons.

18 **THE COURT:** Do they include submariners, for example?

19 **THE WITNESS:** Yes, submariners --

20 **THE COURT:** Do they include people going to Pensacola
21 for flight school?

22 **THE WITNESS:** Yes, that would be --

23 **THE COURT:** What are the 5 percent that are not in the
24 95?

25 **THE WITNESS:** They would be what we call the staff

1 corps, the support communities, for example, supply corps,
2 logistics, meteorology, doctors.

3 **THE COURT:** Right. It include the JAG Corps at that
4 point because they haven't been to law school yet.

5 **THE WITNESS:** Well, fortunately, you can become a
6 lawyer as naval officer, but not from the Naval Academy.
7 Our --

8 **THE COURT:** That's right. That's right.

9 **THE WITNESS:** Yeah. So you have to go serve something
10 else first.

11 **THE COURT:** That's right. You have to go to law
12 school.

13 So the point is 95 percent unrestricted line means,
14 essentially, all the combat arms. Okay?

15 **THE WITNESS:** Correct. That would be a good way to
16 say it, yes.

17 **BY MR. GARDNER:**

18 **Q.** And then the converse, of course, Dean Latta, is what
19 percentage of Naval Academy graduates go into the restricted
20 line?

21 **A.** About 5 percent.

22 **Q.** What percentage of Naval Academy graduates go on to be
23 senior flag officers?

24 **A.** About 40 percent.

25 **Q.** Okay.

1 **MR. GARDNER:** Sorry. Just one second, Your Honor.
2 Court's indulgence?

3 **THE COURT:** Sure.

4 **BY MR. GARDNER:**

5 **Q.** I'm sorry. I did mess that up.

6 It's what percentage of flag officers are Naval Academy
7 graduates?

8 **A.** 40 percent.

9 **Q.** Thank you.

10 **MR. GARDNER:** I apologize, Your Honor. That was my
11 bad in the question. I have no further questions for this
12 witness.

13 **THE COURT:** Thank you very much.

14 Just one question I have just to clarify. I'm not sure if
15 there's any dispute on this.

16 You indicated, Dean Latta, with respect to -- one second
17 here.

18 In terms of minority overrepresentation in enlisted ranks,
19 I think you said -- did you say over 50 percent?

20 **THE WITNESS:** Yeah. It's my understanding --

21 **THE COURT:** Do you have a precise figure on what that
22 is in terms of the minority percentage of enlisted ranks in the
23 Navy? And Navy and Marine Corps together.

24 **THE WITNESS:** I don't have the numbers for the Marine
25 Corps.

1 The last statistics I looked at, it's about 52 percent of
2 the enlisted corps were racial and ethnic minorities. The
3 numbers may have changed since I last looked at it. And so we
4 can get --

5 THE COURT: So it's over 50 percent of enlisted ranks
6 in the Navy and Marine Corps are minority, correct?

7 THE WITNESS: Yes, sir.

8 THE COURT: And then what is the percentage overall of
9 the percentage of the officer corps, again in the Navy and
10 Marine Corps, compared with the percentage in the enlisted
11 ranks?

12 You said it's -- essentially you said minority -- you
13 stated that there's overrepresentation of minorities in the
14 enlisted ranks.

15 THE WITNESS: Right.

16 THE COURT: And then there's underrepresentation in
17 the officer corps. I understand the figure given as to
18 overrepresentation.

19 Again, what is the figure as to underrepresentation for
20 the officer corps?

21 THE WITNESS: I'm not -- I don't have -- my -- I was
22 briefed that about 20 percent in the unrestricted line are
23 minorities.

24 THE COURT: I understand. Thank you very much.

25 You may step down. And you're a representative of the

1 Academy. You may go back here and be seated here in the
2 courtroom. Thank you very much.

3 All right. The next witness here, Mr. Mortara?

4 **MR. MORTARA:** Your Honor, Mr. McCarthy will call
5 Professor Peter Arcidiacono.

6 **THE COURT:** Okay. Fine. Thank you.

7 Mr. McCarthy, if you'll do so. Thank you.

8 We'll go for about another half an hour, and then we'll
9 stop for lunch.

10 **MR. MCCARTHY:** Thank you, Your Honor.

11 **THE COURT:** So with that, Mr. McCarthy, nice to see
12 you.

13 **MR. MCCARTHY:** Nice to see you, Your Honor.

14 **THE COURT:** Okay. Here we go.

15 **MR. MCCARTHY:** Plaintiff calls Professor Peter
16 Arcidiacono to the stand.

17 **THE CLERK:** Please raise your right hand, please.

18 (Witness sworn.)

19 **THE CLERK:** If you don't mind, please, stating and
20 spelling your first and last name for the record.

21 **THE WITNESS:** Peter Arcidiacono, P-E-T-E-R,
22 A-R-C-I-D-I-A-C-O-N-O.

23 **THE CLERK:** Thank you.

24 **DIRECT EXAMINATION**

25 **BY MR. MCCARTHY:**

1 Q. Good morning -- or I guess it's afternoon now.

2 Could you please introduce yourself to the Court.

3 A. Peter Arcidiacono.

4 Q. Professor Arcidiacono, where do you work?

5 A. I work at Duke University.

6 Q. Were you hired to provide testimony in this case?

7 A. I was.

8 Q. What are the primary issues you are addressing with your
9 testimony today?

10 A. I'll be looking at the role that race and ethnicity plays
11 in USNA's admissions process as well as the role that it plays
12 at NAPS.

13 Q. Did you reach any conclusions on those questions?

14 A. I did. For non-blue-chip athletes and those not applying
15 for one of the Navy's preparatory programs, I see that race
16 plays a significant role throughout USNA's various admissions
17 channels, and that we see large preferences, especially for
18 Black applicants, over all other applicants, but then for
19 Hispanic and Asian applicants over White applicants.

20 If we turn to NAPS, you basically see the same pattern.
21 So large preferences for Black applicants, followed by Hispanic
22 and Asian American applicants, and then White applicants are
23 the baseline.

24 Q. We'll come back to that. First I'd like to ask you some
25 questions about your background.

1 What is your current position at Duke?

2 A. I'm the William Henry Glasson Distinguished Professor of
3 Economics.

4 Q. Is that a tenured position?

5 A. It is.

6 Q. When did you start at Duke?

7 A. 1999.

8 Q. When were you awarded tenure?

9 A. 2006.

10 Q. How long after that did you become a full professor?

11 A. 2010.

12 Q. When did you earn the title of William Henry Glasson
13 Distinguished Professor of Economics?

14 A. 2002.

15 Q. Does that title mean that you were appointed to a named
16 chair in the economics department?

17 A. It does.

18 Q. Is that considered an honor to become a distinguished
19 professor of economics with a department chair?

20 A. Yes. It's the highest honor the university can bestow on
21 a member of its faculty.

22 Q. Before you started at Duke, where did you study economics?

23 A. I got my PhD in economics from the University of
24 Wisconsin, Madison, in 1999.

25 Q. At Duke what's been the focus of your research?

1 A. Applied microeconomics and applied econometrics generally,
2 then labor economics. And within labor economics, much of my
3 research has focused on higher education.

4 Q. What areas of higher education?

5 A. Many. So, obviously, affirmative action in higher
6 education, but also things like choice of major, peer effects,
7 how education affects your earnings, how it matters for your
8 performance, how it affects what courses you choose.

9 Q. In doing all this --

10 THE COURT: Bring that microphone a little closer to
11 you. You're sort of drifting out a little bit here. Okay?

12 THE WITNESS: Sorry. I can scoot up.

13 BY MR. MCCARTHY:

14 Q. In doing all of this work and research, do you specialize
15 in using any particular econometric methods?

16 A. Yes. Primarily using discrete choice methods make up a
17 large bulk of my work, and all of this is really empirical
18 modeling.

19 Q. What is the objective of that kind of empirical modeling?

20 A. What we're trying to do is figure out what causes what?
21 What is the relationship between various factors and some
22 outcome? So how does a college degree affect your earnings?

23 Q. How much of your work involves this kind of building and
24 using empirical modeling?

25 A. Virtually all of it. I have a couple of applied theory

1 papers, but almost all of my work is empirical.

2 Q. Is empirical modeling like this a technique often employed
3 in your field?

4 A. Yes. There's a whole wing to developing techniques to do
5 this empirical analysis. And I participate in some of that
6 too, and that's econometrics.

7 Q. Have you heard and seen testimony from the Naval Academy
8 describing its admissions system as holistic and intended --

9 A. I have.

10 Q. Also and intended to draw students from a wide variety of
11 backgrounds?

12 A. I have.

13 Q. Does that make the Academy's admissions process incapable
14 of being modeled?

15 A. No, it does not.

16 Q. Do you model complex choice situations all the time?

17 A. All the time, be it from how people make decisions about
18 their occupation, how they make their major decisions over time
19 as they receive new information, and also how they make
20 decisions about whether to drink alcohol. A wide range of
21 things.

22 Q. Have you modeled undergraduate admissions decisions
23 before?

24 A. I have.

25 Q. Can you give me some examples?

1 A. So I've done that both in my academic work outside of my
2 legal work, and I've modeled admissions decisions. And then as
3 part of the *Harvard* and *UNC* cases, I also modeled admissions
4 decisions and then used those models there to publish those
5 results as part of my academic work as well.

6 Q. In those cases were the admissions processes of Harvard
7 and North Carolina similarly described as holistic and intended
8 to draw students from a wide variety of backgrounds?

9 A. They were.

10 Q. Were those admissions processes at Harvard and UNC
11 complex?

12 A. Definitely. And I would say that is especially true
13 for Harvard. You can see that in lots of ways. They have
14 letters that go out that are likely letters that say you're
15 likely to get admission.

16 They have early decision that happens there. They have
17 various stages of the reader process where you have one person
18 read the file and then, if it's good enough, it'll go on to the
19 second stage.

20 And they're doing all this in the context of what they
21 call dockets so that you're comparing people within a similar
22 region and such. And then they have a wait list.

23 Q. Were those admissions processes at Harvard and
24 North Carolina nonetheless amenable to empirical modeling?

25 A. They were.

1 Q. Do you teach?

2 A. I do.

3 Q. What courses do you teach?

4 A. So at the graduate level, I teach dynamic discrete choice,
5 which is -- uses some of the methods I'm going to be using here
6 for discrete choice, but then there it's a lot more complicated
7 because then we're going to be having the dynamic part of it
8 being people are making decisions today given expectations
9 about the future.

10 So I may choose a very hard subject to study, and it may
11 be painful at that time, but then it's going to be worth it for
12 the later life outcomes.

13 Q. And that's discrete -- that's your course in dynamic
14 discrete choice, you said?

15 A. That's right. The other --

16 Q. What do you cover -- go ahead.

17 A. The other course I teach at the graduate level is learning
18 economics. And this is really about sort of the next level of
19 that class. So we do a lot of stuff with what people's beliefs
20 are. How do you learn about the qualities of your partner?
21 How do you learn about the match between you and a major and
22 such? Those kinds of things.

23 Q. Do you teach undergrad as well?

24 A. I do.

25 Q. What course do you teach in undergrad?

1 A. Intermediate microeconomics. The intermediate comes from
2 the fact that it's, like, lots of calculus, basically.

3 Q. And about how many times have you published academic
4 articles in peer-reviewed publications?

5 A. More than 45 times.

6 Q. How many of those articles include econometric modeling?

7 A. Again, virtually all of them.

8 Q. Could you explain what it means for academic writings to
9 be peer-reviewed?

10 A. So you'll submit the paper to a journal, and the editor of
11 the journal will then -- if you get past the desk reject stage,
12 will send it out to referees. And these referees are going to
13 be other academics in the area who know something about that
14 area.

15 Those referees are anonymous. And then they'll submit
16 referee reports with a recommendation about should this paper
17 be rejected? Maybe it could be accepted but they need to make
18 some changes.

19 And then those come back to the author. And then the
20 author, if they have the opportunity to revise the paper, does
21 so. And that can go on multiple rounds before a paper
22 eventually is accepted by the editor for publication.

23 Q. Now, on those 45 or so publications in peer-reviewed
24 journals, how many of those related to issues of higher
25 education?

1 A. Well over half.

2 Q. What topics on higher education have you covered in these
3 publications?

4 A. Lots. Affirmative action. Higher education. How people
5 select into friendships in college, paying a particular focus
6 on race in those friendships. How people choose their college
7 major. How people choose their college classes and what grades
8 they get in those classes.

9 Q. And you mentioned publishing academic papers about your
10 empirical modeling of the processes in the Harvard and UNC
11 cases.

12 Were those published in the peer-reviewed journals?

13 A. They were. So that is the standard that I hold myself to
14 with regard to my reports.

15 As somebody who studies affirmative action, the idea of
16 being able to look at Harvard's admissions files was, you know,
17 a great opportunity. Admissions is typically highly guarded.

18 So I published five papers out of my work on the *Harvard*
19 and *UNC* cases. Now, to be fair, three of those were based on
20 the empirical models of admissions in those cases.

21 Q. Throughout all of your work in the area of higher
22 education, have you received any recognition for this work?

23 A. Yes. I was invited to do two survey papers on affirmative
24 action in higher education. One is in the *Journal of Economic*
25 *Literature*, which is sort of the top outlet for economists for

1 surveys of this type. And another is in the Annual Review of
2 Economics in 2015.

3 I've also written a Handbook of the Economics of Education
4 chapter on the choice of college major.

5 Q. Are you an opponent of affirmative action?

6 A. I do not view myself as an opponent of affirmative action;
7 I view myself as a researcher of affirmative action. As a
8 researcher, you see benefits and costs of different policies.

9 Q. Can you give me an example of one of your writings on
10 affirmative action?

11 A. So in 2012 I wrote a paper about what happened to Duke.
12 And Duke does a great job of sort of graduating all of its
13 students regardless of race.

14 But where you do see differences is on the choice of
15 college major. And so the motivating facts for the paper was
16 particularly stark for Black men versus White men, was that
17 over half of Black men who started studying in STEM fields or
18 economics switched out. So they still graduated, but they
19 switched to a different major. That contrasted with 8 percent
20 of White men.

21 Now, the natural question is then sort of why? And so
22 that was what the paper was really about, is trying to
23 understand what were the factors that were driving these
24 differences in performance and such.

25 And it turned out it had very little to do with race --

1 so, actually, really nothing to do with race. You see these
2 large racial gaps when you don't control for anything, but when
3 you account for differences in academic background, those went
4 away.

5 So as an example, SAT math scores are incredibly important
6 for persistence in the sciences and in economics. I told you
7 in my class I use calculus. If you've already had
8 multivariable calculus, you're going to do better in the class.
9 So it's that kind of idea.

10 And so one of the costs of affirmative action is that it
11 naturally leads you to take someone who doesn't have the same
12 academic background as the other students. The marginal Black
13 students admitted under affirmative action is going to have
14 weaker qualifications. That's not true of all Black students,
15 but affirmative action is going to affect that at that end.

16 Q. Back to your qualifications. Do you have any editorial
17 positions?

18 A. I do. I'm an associate editor at the Journal of Applied
19 Econometrics, and in the past I've served as an editor or a
20 coeditor or an associate editor at five other journals.

21 Q. Have you had any other appointments or received any other
22 honors?

23 A. I'm a research fellow at the National Bureau of Economic
24 Research. Maybe it's research associate; I get these things
25 mixed up. I'm also a fellow of the Econometrics Society and a

1 fellow at the International Association of Applied
2 Econometrics.

3 **MR. MCCARTHY:** Plaintiff offers Professor Peter
4 Arcidiacono as an expert in econometric analysis in the area of
5 higher education.

6 **MR. GARDNER:** No objection.

7 **THE COURT:** He'll be so accepted. He's qualified as
8 an expert in the general area of higher education.

9 **BY MR. MCCARTHY:**

10 **Q.** Professor Arcidiacono, did you prepare an expert report in
11 this case?

12 **A.** I did.

13 **Q.** Is it the one in the binder next to you marked as
14 Exhibit P218?

15 **A.** It is.

16 **Q.** Did you prepare a rebuttal expert report in this case?

17 **A.** I did.

18 **Q.** Is it the one in the binder next to you marked as
19 Exhibit P222?

20 **A.** It is.

21 **Q.** Did you also prepare a reply expert report in this case?

22 **A.** I did.

23 **Q.** Is it the one in the binder next to you marked as
24 Exhibit P518?

25 **A.** It is.

1 Q. Do these reports contain the opinions you intend to offer
2 today?

3 A. They do.

4 MR. MCCARTHY: I move to admit Exhibits P218, 222, and
5 P518 into evidence.

6 THE COURT: Consistent with the previous rulings, they
7 will be admitted. To the extent that there are any hearsay
8 implications in those reports, it's a bench trial. I can still
9 deal with those and discount those. So the same ruling I made
10 previously with an issue raised, I think by Mr. Robinson, the
11 same ruling applies here.

12 MR. GARDNER: Thank you, Your Honor. Just to be
13 clear, so we preserved our objections to the hearsay and the
14 hearsay within hearsay, correct?

15 THE COURT: Sure. I understand that. Yeah, for the
16 same reasons that I've indicated previously, you know, he's
17 qualified to testify as an expert in the area of higher
18 education and not in the area of military, for example,
19 obviously. And to the extent there's any hearsay that's woven
20 in, it'll be discounted.

21 So I'd like to hear what he has to say.

22 MR. MCCARTHY: Thank you.

23 BY MR. MCCARTHY:

24 Q. Professor Arcidiacono, I'd like to turn to your work in
25 this case. How does the work you've done in this case compare

1 to your academic work?

2 A. Well, that was the attraction, actually, of taking the
3 Harvard and UNC cases, was because I got to have that detailed
4 data. And that's the attraction here as well.

5 So compared to my non-Harvard and -UNC work, the data is
6 much better because you get the behind-the-scenes look at the
7 data. You typically don't have information on, for example,
8 internal ratings of applicants. That's not available in most
9 public datasets because universities guard them. So the data
10 is of higher quality than what is in most of my published
11 research.

12 Q. What is the effect of having this kind of quality of
13 data -- like the internal ratings and such that you just
14 mentioned, what's the effect on your work?

15 A. Well, we can be much more confident in the results.

16 Q. Were there any anomalies in the data produced by the
17 defendants?

18 A. There were. Over the course of receiving the data, you
19 would see different files get updated. And so for a handful of
20 people, you might see an SAT score for one person that's one
21 number, and then it would get updated over the course of
22 discovery to a different number. But those cases are sort of a
23 small handful there.

24 There were some people who had multiple ZIP codes. But,
25 again, that's sort of -- a small handful of people had multiple

1 ZIP codes.

2 And then, you know, USNA overwrites a lot of their
3 information. And you could see that with the fact that one
4 thing I won't be testifying about today is letters of
5 assurance, being able to model that, because that's a field
6 that gets overwritten over the course of their data.

7 Q. Do any of the anomalies in the data produced by defendants
8 prevent you from reliably modeling the Naval Academy admissions
9 process and the decisions they make in that process?

10 A. No. I mean, there's -- again, just some slight messiness
11 to the data, but no more so than what you typically see in
12 empirical work.

13 Q. What were you asked to do for your testimony today?

14 A. So my testimony today is to analyze the role that race
15 plays -- race and ethnicity plays in the Naval Academy's
16 admissions process as well as in NAPS.

17 Q. Did you prepare a set of slides to be used as
18 demonstratives as you testify today?

19 A. I did.

20 Q. How do you go about answering these questions regarding
21 the role of race?

22 A. So I think the same approach that I would do in all my
23 academic work. And there's sort of a step zero here, which is
24 to familiarize yourself with the literature broadly but then
25 how the particular institutional setting that we're looking at.

1 So, you know, reading the declarations in the case and the
2 various procedures and such that -- to have some background
3 going in.

4 But then the next step is to, given that information,
5 create the dataset for the analysis.

6 And here, what we're trying to do is say, okay, well, what
7 applicants would you be focusing on? And, you know, are there
8 any irregularities that we need to deal with?

9 The second step is look at the descriptive analysis. And
10 that's just to say, okay, we figured out what data we're going
11 to analyze. What are the general patterns that we see?

12 And these general patterns can hold with regard to race
13 but also with regard to blue-chip athletes or other
14 characteristics. What patterns do we see in the data?

15 And those patterns are with an eye toward motivating
16 what's going to happen in step three. And step three is where
17 we're actually forming the model -- in this case, of the
18 admissions process -- and doing the regression analysis to see,
19 okay, what we saw of those descriptive patterns over here, what
20 actually matters after you account for all these other things
21 that are going on?

22 And then you get the results of that model, and you can
23 see certain factors mattering there, but then you want to be
24 able to quantify how much those factors matter.

25 So then, with that, we can analyze how race affects

1 admissions outcomes in a variety of ways. And then at the end,
2 you're going to sort of look for, well, is there auxiliary
3 evidence that my results are reasonable?

4 Q. Let's start with step one. What data was your starting
5 point?

6 A. So we were given five years of data covering the classes
7 of 2023 to 2027. So those would be, like, when they would
8 graduate. So it's 1999 to 2023 --

9 Q. I think you said 1999. I think you probably meant 2019.

10 A. 2019. Sorry.

11 Q. That's okay.

12 A. Yeah.

13 Q. About how many applicants were in that dataset in total?

14 A. Over 70,000.

15 Q. What kind of information was in that dataset?

16 A. So one of the big things here, the WPM components. And
17 that's not just one thing; that's all of the components -- the
18 test scores, the ratings of the extracurriculars, and
19 recommendations and such.

20 But then you have, you know, the fitness exam, not only
21 whether they passed that exam, but what their score was. You
22 also have the medical exam, their BGO interview scores.

23 Then we have things like demographics and SES variables.
24 What I mean by those, we have race, of course, but then we're
25 going to have whether you're first-generation college and what

1 fraction of students in your high school go on to college.

2 We also have whether you're coming from one of the prep
3 programs -- that's the NAPS, CivPrep, and Foundation -- whether
4 you're a highly-desired athlete, the blue-chip athlete.

5 And then in this case, we're going to have things about
6 the slates that you're on -- so who nominated you, who are you
7 competing against, and such.

8 And then as well as how did you get in? Were you admitted
9 as a congressional slate winner or as a qualified alternate?
10 Those kinds of things.

11 Q. And about how many fields would you say were in the data
12 with regard to each applicant? Dozens? Hundreds?

13 A. Hundreds.

14 Q. Did you supplement this dataset with any other data?

15 A. I did.

16 Q. What data was that?

17 A. So we're going to merge in some characteristics of the
18 community to get more measures of socioeconomic status. So
19 that's going to give us things like the average income of your
20 ZIP code.

21 And then we're going to merge in characteristics of your
22 school from publicly available data as well. We also merge in
23 information about what party was making the nomination. And
24 then there was some publicly available data on -- from USNA
25 that we could find both on athletic rosters and on commandant's

1 lists.

2 Q. Beyond the applicant data and the publicly available data
3 that you described, did you review any other materials produced
4 in this case?

5 A. I reviewed lots of documents produced by USNA.

6 Q. Did you review any deposition transcripts?

7 A. I did. I reviewed the 30(b)(6), and then I reviewed
8 Dr. Gurrea's deposition.

9 Q. Did you review any expert reports?

10 A. I did. I reviewed the ones that USNA produced as well as
11 Rick Kahlenberg's.

12 Q. Now back to the dataset. You said you started with a
13 dataset with more than 70,000 applicants.

14 Did you do anything to prepare the dataset for your
15 statistical analysis?

16 A. I did.

17 Q. Please describe what you did.

18 A. So we start off with over 70,000 applicants. And then the
19 first step -- this case is really about domestic applicants,
20 and I'm not quite sure how the process even works for the
21 non-U.S. citizens and such. So we removed non-U.S. citizens
22 and those nominated by foreign delegates from that applicant
23 pool.

24 Now, the process of applying to USNA, there's a lot going
25 on there. And so plenty of people don't complete their

1 applications. So even though we had well over 70,000, you lose
2 over 44,000 because of incomplete applications or they withdrew
3 their application. None of those people are admitted.

4 Then you're supposed to have a nomination to get into
5 USNA. And we have that for almost all admits. So we're going
6 to remove those without a nomination. You also need to qualify
7 medically or physically.

8 And here I just want to point out that there were a
9 handful, eight observations, where we recoded somebody who was
10 listed as failing either the medical or the fitness exam as
11 having passed because it was such a small number. And we
12 figured they must have gotten a waiver or passed it eventually
13 and it was an error in the data.

14 There's a very small number of people also who were
15 missing some components of the WPM. Since that's a key
16 variable for our admissions models, we're going to remove those
17 as well.

18 And then for at least -- for my admissions models, we're
19 going to be removing two other sets of applicants. The first
20 are these blue-chip athletes. Basically, they all get in; so
21 there's nothing really to model there.

22 And that is also -- it's clear that the process operates
23 differently if you're applying from one of these prep programs.
24 So we're going to remove those as well.

25 And it's, like, 94 percent of them are admitted

1 conditional on having qualified medically and physically.

2 **Q.** Professor Arcidiacono, you said you started by removing
3 the foreign applicants and those who received nominations from
4 foreign delegates.

5 So how many applicants were there after you made those
6 first cuts of the data?

7 **A.** 69,570.

8 **Q.** And how about admits were there, then?

9 **A.** 6,920.

10 **Q.** By the time you got to the end of this process here that
11 you just described, how many applicants were there in the
12 dataset?

13 **A.** 12,340 applicants; 4,728 admits.

14 **Q.** Let's move on to your next slide.

15 **MR. MCCARTHY:** Your Honor, would you like to take a
16 lunch break now?

17 **THE COURT:** Yeah. That's fine. We can stop now.
18 It's not quite quarter after 1:00. We'll start again at
19 quarter after 2:00.

20 Professor, you should not discuss your testimony with
21 anyone while you're off the witness stand, which means you need
22 to have lunch by yourself. So simple as that. Have lunch by
23 yourself and don't have lunch with the team. And that's the
24 best way to do it.

25 **THE WITNESS:** My wife came. Can I have lunch with her

1 and not talk to her?

2 **THE COURT:** Yeah, it depends. It depends if she's
3 been in the courtroom listening to other people. It doesn't
4 make any difference. You can have lunch with your wife,
5 without question. You have a court order, but you have to buy
6 her lunch. You have to buy her lunch.

7 **MR. GARDNER:** The government has no objection to him
8 having lunch with his wife.

9 **THE COURT:** The court stands in recess for an hour.

10 **(There was a break at 1:12 p.m. to 2:18 p.m.)**

11 **THE COURT:** Good afternoon, everyone. You all may be
12 seated.

13 We'll proceed, Mr. McCarthy.

14 **MR. MCCARTHY:** Thank you, Your Honor.

15 **BY MR. MCCARTHY:**

16 **Q.** Professor Arcidiacono, what do you display on this slide?

17 **A.** So in the same way we made some sample cuts for my
18 analysis of the Naval Academy, we did the same thing for our
19 analyses of NAPS.

20 **Q.** And how many observations were there at the start?

21 **A.** We began with 70,508 applicants, with 1,379 admits. And
22 so that lines up with what we had when we were looking at the
23 Naval Academy.

24 Then we make a number of cuts. You don't -- no longer
25 need a nomination. We're going to get rid of those incompletes

1 and such. And we're also going to eliminate those who were
2 admitted to USNA or to Foundation or CivPrep.

3 And then, finally, if you were -- had already gone to one
4 of the prep programs, we're going to take you out from there as
5 well because we don't see anybody in the data that actually
6 goes from NAPS to NAPS again or from Foundation to NAPS.

7 And then gender is listed in lots of places, but it's
8 missing in some -- sometimes. And so we toss a few
9 observations for which we could not get gender.

10 Q. Looking back on this task overall, how many applicants and
11 admits were there in the dataset you used for analyzing
12 admission to NAPS?

13 A. 9,521, with 1,379 admits.

14 Q. Did you recode any of the applicants in this dataset?

15 A. I did. There were six NAPS admits that were coded as
16 failing one of the fitness or medical exam. And we treated
17 that as though that was an error in the data and corrected it
18 to being a success.

19 Q. Does that recoding of a handful of observations affect
20 your analysis?

21 A. It does not.

22 Q. What is the second step of your academic approach?

23 A. The descriptive analysis.

24 Q. What do you do in this step?

25 A. Well, now we're going to be analyzing the patterns in the

1 data and, in particular, patterns with regard to race.

2 Q. Before we get into your descriptive analysis, can you
3 describe how you categorize race.

4 A. So I'm going to categorize race -- USNA categorizes race
5 in many ways. I'm going to use the same way that I did in
6 Harvard and UNC in that, if you list Black as one of your
7 races, I'm going to count you as Black. I'm going to treat
8 Hispanic -- I'm going to combine these things. So race
9 ethnicity, but I'm going to treat this as one.

10 So then if you're Hispanic but not Black, you're going to
11 be Hispanic. If you're neither of those two and you list
12 Native American, you'll be Native American. And then if you're
13 neither of those, then we go to Asian, and then finally White.

14 But we can see how well that method of categorizing race
15 doesn't predict admissions relative to alternative
16 categorizations.

17 Q. Thank you. Let's move on to your descriptive analysis.

18 Mr. Pusterla, can you put up -- hold on just a second,
19 actually. First, you can shut it off for a second.

20 Professor Arcidiacono, there's been some testimony in this
21 case about the designation of early notify. Do you understand
22 what the early notify designation means?

23 A. I do.

24 Q. And can you tell me what it is.

25 A. Well, it's basically the board's recommendation about

1 someone who you could possibly give an LOA to. And then the
2 slate review committee would make that decision.

3 Q. Would -- is there information or data about early notify
4 in the data that was produced by the defendants?

5 A. There is.

6 Q. And would that information include data on the number of
7 early notified designations?

8 A. It would.

9 Q. Do you happen to know what the number of early notified
10 decisions is over the five-year period for which data was
11 produced?

12 A. I have a table that shows that.

13 Q. Okay.

14 Mr. Pusterla, can you pull up P518 and please go to
15 page 35.

16 Is Table A.4 in the appendix of this reply report what you
17 were thinking of, Professor Arcidiacono?

18 A. Yes.

19 Q. What does the column on the far right show?

20 A. It shows everybody in -- well, it shows a share of admits.
21 And you can see at the bottom how many admits we're talking
22 about, so 6,913.

23 I think if we went back to our original sample cuts,
24 that's basically everybody but the foreign applicants plus
25 seven.

1 So then what you can see in that final column, share of
2 admits, is that over 85 percent of those who are admitted
3 received an early notify designation.

4 Q. So if you wanted to know the number -- the actual number
5 of early notified designations, how would you figure it out
6 from this chart?

7 A. Well, we multiply the 85.55 times the 6,913. And I think
8 you get 5,914 if you do that.

9 Q. As a former high school math teacher, I can't say that I
10 keep up with you on all the math; but the multiplication, I'm
11 pretty good at. I think you got it right.

12 THE COURT: If he gets into calculus, Mr. McCarthy,
13 we'll take a break, I can promise you, sir.

14 MR. MCCARTHY: I would need to read up on that a
15 little bit, Your Honor, before I get through the calculus.

16 Mr. Pusterla, could you pull up Number 60.

17 BY MR. MCCARTHY:

18 Q. Professor Arcidiacono, what is the title of this summary
19 exhibit?

20 A. This is the number cases where a candidate with the
21 highest WPM on the slate was routed to qualified alternate or
22 an additional appointee slot; so they weren't the congressional
23 slate winner.

24 Q. Did you help prepare this summary exhibit?

25 A. I did.

1 Q. Did you review the data that went into making this slide?

2 A. I did.

3 Q. Are the slates here from which these candidates came from,
4 are they all competitive slates?

5 A. They are all except for there's one in 2025 where a
6 particular applicant was listed as competitive, but the other
7 people are listed on a different kind of slate. But everyone
8 else satisfies that.

9 Q. And that one was a competitive candidate, just not on a
10 competitive slate?

11 A. Exactly.

12 Q. Thank you.

13 Mr. Pusterla, can you go to Number 7.

14 Professor Arcidiacono, what do you display on this slide?

15 A. So we're going to look at admission rates by race for
16 people who have qualified medically and physically with
17 completed applications and who have nominations.

18 And so note that this does include the blue-chip athletes
19 and applicants for prep school here.

20 And then the first column of this slide, the title is
21 actually mislabeled. It should say USNA plus being admitted to
22 any of the prep programs, not just NAPS.

23 That first column there shows the admit rate by racial
24 group. And so you can see sort of stark differences across
25 races overall. So over 80 percent of Black applicants are

1 being admitted to either USNA or one of the prep programs
2 versus, you know, less than 50 percent of White applicants.

3 Q. And this is, as you said, for the Naval Academy or one of
4 the prep programs, correct?

5 A. Correct.

6 Q. What are the admit rates by race there in that column?

7 A. 48.88 for White applicants, 80.24 percent for Black
8 applicants, 61.18 percent for Hispanic applicants, 67.9 percent
9 for Asian American applicants. And then the overall rate is
10 55.56 percent.

11 Q. Did you observe anything about the admit rate to the Naval
12 Academy itself from the second column?

13 A. I did. So that -- again, we see pretty large differences.
14 For Black applicants, it's almost 59 percent, whereas for White
15 applicants, it's 44 percent. And now you can see that Asian
16 Americans have the highest at 60 percent.

17 Q. Did you look into whether there were variations in the
18 admissions channels across race?

19 A. I did.

20 Q. Okay.

21 Mr. Pusterla, can you put up Number 8. Thank you.

22 A. All right, sir. There are a lot of numbers on this slide.

23 Q. Yeah, you might want to help orient us by telling us how
24 to read it.

25 A. And I'm going to show four of these slides, one for each

1 admissions channel. So the four admissions channel being a
2 congressional slate winner, a qualified alternate, a service --
3 through one of the service connected, or as an additional
4 appointee.

5 So this is the one for congressional slate winners. And
6 what we're looking at are enrollees because it's telling you
7 how that particular student enters into the Naval Academy.

8 And what I've done here is I've broken it out with the
9 columns for sort of four categories of applicants. In the
10 first column, which is going to be my main focus, are the ones
11 who are not blue-chip athletes and not applying from a prep
12 program.

13 The second column is blue-chip athletes who are not coming
14 from a prep program.

15 And the last two columns are the same as the first two,
16 except now you are coming from a prep program.

17 And then in Panel A, I'm telling you the numbers. So you
18 can see 1,729 White -- there are 1,729 White congressional
19 slate winners here. And what's going on in Panel B is the
20 share of Whites that are coming from each of those four
21 channels. So that 89.6 percent says of all the White
22 congressional slate winners, 89.6 percent are non-blue-chip
23 athletes, nonprep.

24 And what you'll notice in Panel B is that, with the
25 exception of Black enrollees, they're all above 80 percent. So

1 most people are coming from this non-BCA, nonprep. And even
2 for Black applicants, it's well over 50 percent at 63.4. Okay?

3 And then just to orient you in terms of that bottom column
4 in Panel C, that's showing four non-BCA, nonprep congressional
5 slate winners, the share in each racial group.

6 So for non-BCA, nonprep congressional slate winners,
7 68.3 percent of them are White, 3.1 percent are Black,
8 10.9 percent are Hispanic, and 13.9 percent are Asian American.

9 And the reason I put this up here -- and I'm going to show
10 you now the other channels -- is that the pattern is going to
11 look different as we go through but not on the next one.

12 So we go to the next slide, unless there's something else
13 that you want me to discuss.

14 Q. Yes.

15 Can you back up one for just a second, Mr. Pusterla.

16 I just wanted to ask: What's the total number of non-BCA,
17 nonprep congressional slate enrollees?

18 A. So that would be 2,532.

19 Q. Thank you.

20 So does this second slide here of this set, is this set up
21 similar to the first one?

22 A. Yeah. And I should make one point here. I think if you
23 added up those numbers, you may not get that exact number. And
24 that's because for Native Americans and those who declined, I'm
25 not reporting those here; they're part of the total. And it's

1 just that they're a very small group.

2 So now we're doing the exact same thing as we did on the
3 previous one except now we're looking at qualified alternates.
4 And there it's even more clear, if you look at Panel B, that,
5 you know, most of the applicants -- most of the people who are
6 winning qualified alternate slots are non-blue-chip athletes
7 and not coming from the prep programs. In each case, it's over
8 82 percent.

9 And then when you look at the racial composition of those
10 non-blue-chip athlete, nonprep ones that win qualified
11 alternate, again you see a large number of White winners with
12 63.1, 3.7 for Black, 8.4 percent for Hispanic, and 21.4 percent
13 qualified alternates are Asian Americans.

14 Now, I put these two slides up here to actually draw the
15 contrast to what these numbers will look like on the next two
16 slides.

17 So now we're to service-connected channels. And now you
18 can see, if you go to Panel B, now all the numbers are less
19 than 50 percent, right? So a lot of them are coming more from
20 the prep programs.

21 So if you added up non-BCA prep and BCA prep for the White
22 applicants, that would be about half of the service-connected
23 enrollees.

24 And you can also see that we're getting a change in the
25 racial distribution both overall for service-connected

1 enrollees but also for the non-blue-chip athlete, nonprep.

2 So for non-blue-chip athlete, nonprep, you can see that
3 Whites are now a little over 40 percent, Black applicants are
4 now much larger than they were on the previous two slides at
5 17.7 percent, Hispanics at 16.9, and Asian Americans at 15.6.

6 But this is the one. All of this is sort of a setup for
7 what we see with additional appointees. Okay?

8 So if you look at additional appointees, you see this --
9 you know, I think we've heard the number that -- something like
10 60 percent of additional appointees are White.

11 Well, that's partly because how do we calculate who's
12 White, right? Because if you're Hispanic and White, I'm not
13 counting you here. These are for the White enrollees who are
14 not Hispanic. So here, less than 50 percent of additional
15 appointees are White.

16 But what's really interesting to me is how different the
17 numbers are across these columns. So if you just look at
18 Panel A for the moment and just the first two columns, what you
19 can see is that, for White additional appointees, 397 of them
20 are blue-chip athletes not coming from a prep program.

21 And that's way bigger than the number in the --
22 corresponding in the first column, which is 53. And that
23 stands in contrast to each of the other racial groups, right?
24 So in each of the other racial groups, it's always the case
25 that the numbers are higher for non-BCA nonprep than for BCA

1 nonprep.

2 So for Black additional appointees, we're talking about 85
3 from non-BCA nonprep versus 66 from BCA nonprep.

4 And then when you get down to Panel C and you see the
5 share of non-BCA nonprep of each race, now Whites who had the
6 highest percentage on each of the other ones are now the lowest
7 at 17.8 percent.

8 So that sort of makes it clear, like, if you're going to
9 be an additional appointee and you're White, you almost need to
10 be a blue-chip athlete. Some definitely are there, but despite
11 the fact that Whites are over the majority of the applicant
12 pool, they're the lowest group among those getting in as
13 additional appointees who are non-BCA nonprep.

14 Q. On this next slide, what do you display there,
15 Professor Arcidiacono?

16 A. So now we're displaying the average whole-person multiple
17 scores net of the RAB -- so we subtracted that out -- by race
18 and admission channel.

19 And what you'll notice is that all the numbers in the
20 first two columns for each race are higher than the numbers in
21 the second two columns. Okay?

22 So you need higher -- you have higher WPM scores
23 associated with congressional slate winners and qualified
24 alternates than getting in through a service-connected or
25 additional appointee channel.

1 And then in terms of racial differences, keep in mind this
2 includes blue-chip athletes and prep pool as well. In terms of
3 racial differences, it's the case that Black enrollees in any
4 of these channels are going to have lower ones than the
5 corresponding WPMs for the other races.

6 Q. Back to that previous one for just a moment.

7 Do you observe anything about the average WPM scores of
8 qualified alternates?

9 A. Yeah. So what you'll see is that White qualified
10 alternate winners have the highest WPMs. And they're actually
11 surprisingly higher than Asian Americans there. And that's
12 going to be your first hint. Qualified alternate was the one
13 when I was looking at this data, thinking, if anyplace where I
14 wouldn't see race, it would be in qualified alternate.

15 But as we'll show later on, for at least part of the
16 qualified alternates, you'll actually see race played a role.

17 Q. Now, this is another big one with lots of numbers. So you
18 may have to walk through this a little bit.

19 But did you compile summary statistics for the applicants
20 to see what factors might be important to admission at the
21 Academy?

22 A. Yes. And for this particular table, it does have the
23 blue-chip athletes and prep in there. But we're looking again
24 throughout passing medical and physical, complete applications,
25 received a nomination.

1 And then with each column, we see the four racial
2 categorizations. And what's shown, say, in Column 1 is this --
3 we're looking at White rejects. And it's saying, for example,
4 for female there, what share of White rejects are female? So
5 in this case it's a little under 22 percent of White rejects
6 are female. If we go to the next number for first-generation
7 college, what share of White rejects are first-generation
8 college? 3.6 percent. One column over does the same thing but
9 now for admits.

10 In presenting it this way, it may look ugly; but it
11 actually conveys what variables just show sort of a raw
12 correlation with being admitted versus rejected. So what do I
13 mean by that?

14 If we look at for female White admits -- sorry. If we
15 look at White admits, the share that are female are 30 percent.
16 That's bigger than the share of White rejects who are female.
17 And so that tells you that being female for White applicants is
18 positively correlated with admission.

19 And I just want to point out here that for
20 first-generation college, that correlation goes the other way.
21 So you see first-generation college students make up a larger
22 share of White rejects than they do of White admits.

23 Similarly, if you went to family income over 80,000,
24 that's a little bit further down, you can see that having a
25 family income over 80,000, those people make up a higher share

1 of admits than they do of rejects. Those patterns hold for
2 each racial group.

3 Q. Now, to make sure we understand how to read this table,
4 what, for example, are the percentages of admits by race who
5 are blue-chip athletes?

6 A. So we would take the 20.24 for White admits. That would
7 tell you what share are blue-chip athletes. And then you'd
8 multiply that number by the 4,056. And that would tell you the
9 number of blue-chip athletes who are White who were admitted.

10 Q. So if you wanted to do that for, say, Black admits who are
11 blue-chip athletes, how would you do that?

12 A. So now we go to the Black admit column. And it's
13 32.87 percent of Black admits are blue-chip athletes of 727
14 total Black admits. We could do the same thing for Hispanic.
15 It's 9.97 percent of Hispanic admits are blue-chip athletes out
16 of 863 total admits. And then for Asian Americans, it's
17 8.52 percent times 986 total admits.

18 Q. Thank you.

19 Mr. Pusterla, can we go to the next slide.

20 This slide, I noticed it says -- it has a little continued
21 abbreviation at the top.

22 A. Yes.

23 Q. Is this sort of a continuation of the previous one?

24 A. It's a continuation of the previous table, just showing
25 even more summary statistics. But this is sort of -- with

1 everything except for the top and bottom row of characteristics
2 here, these are the things that are the preparation components
3 for admission.

4 So you've got your SAT math score, verbal score. Those
5 are both parts of the WPM. We've got the other components of
6 the WPM and the CFA score.

7 Q. Now, does this -- you were talking earlier on the previous
8 slide about positive and negative correlations with admissions.

9 Does this slide reveal any other factors that are
10 positively correlated with admission?

11 A. Yes. And, in fact, all these characteristics that are
12 listed here are positively correlated for admission, both
13 overall and for every racial group.

14 So as an example, if we look at SAT math scores for White
15 admits, that's going to be 684 is the average SAT math score
16 for White admits. But for White rejects, it's lower at 653.

17 Q. And is that true across all races?

18 A. That's true across all races and for every variable. It
19 holds for SAT verbal, CFA score, all of it.

20 Q. On the various scores you've just discussed, did you
21 observe any patterns across racial groups?

22 A. Yes. So if you looked at that total column, that gives
23 you the characteristics of all White applicants there. And
24 what you can see is that, for each of these things, the number
25 in that total column is higher than the corresponding total

1 column for Black applicants.

2 And it's also higher than the total column for Hispanic
3 applicants, with one exception. And that one exception is RAB
4 points. And that's sort of a first hint that race may play a
5 role in RAB points. But we'll get into that more as we go.

6 Q. Did you do a similar analysis for the group without
7 blue-chip athletes and without applicants from the Navy prep
8 programs?

9 A. I did. And here we're really interested in saying, well,
10 how much of this is being driven by the fact that we've got
11 blue-chip athletes and prep pool applicants in here?

12 So this is the same table we had before except without
13 blue-chip athletes and prep pool. And you would read it the
14 same way. And it shows the same patterns, even taking out the
15 BCA and prep pool applicants.

16 So, for example, for female in looking at it for Whites,
17 almost 30 percent of White admits are female versus 22 percent
18 of White rejects. You again see for first-generation college
19 that the numbers for reject are higher than the numbers for
20 admit at 3.57 percent of White rejects versus less than
21 2 percent of White admits.

22 Q. And then you've used the example before of family income
23 over 80,000. Is that one positively correlated with admission
24 again?

25 A. That's right. So now if you're -- over 80 percent of

1 White admits are coming from families making at least 80,000
2 versus a little over 75 percent of White rejects.

3 Q. Let me ask you this.

4 Go to the next slide, please, Mr. Pusterla.

5 So this looks just like the one you had a couple slides
6 back that was for the full class, right?

7 A. That's right. So it's just a continuation of the same
8 table. Now we're looking without BCA and prep. And now we've
9 got all these WPM components.

10 Q. And what factors here are positively correlated with
11 admission?

12 A. All of them. All of them for every race.

13 Q. And do you observe any racial patterns in the data like
14 you did before?

15 A. The racial patterns are the same in the sense that, on
16 every one of these measures, White applicants score higher than
17 Black applicants. And on every one of these measures, they
18 score higher than Hispanic applicants with the exception of the
19 RAB. When you compare Asian Americans, it really depends on
20 what the characteristic is.

21 Q. Okay.

22 Mr. Pusterla, can you highlight for a moment White admits
23 under the RAB row. Then do the same number for Hispanic
24 applicants, the admit column right there in the middle.

25 So you were starting to mention something about the RAB

1 points, Professor Arcidiacono?

2 A. Yes. So what you can see both for applicants, which would
3 be one column over from that, and for admits, Whites are going
4 to have lower RAB points than Hispanic applicants who are
5 admits. And these are all unconditional. Okay? All the other
6 factors you see that Whites score better on.

7 Q. What does this suggest about the RAB?

8 A. It provides a hint that race may play a role in it.

9 Q. Now on to a new slide.

10 This says at the top, "Number and share, WPM 23 deciles by
11 race."

12 We previously heard my friend Mr. Mortara talk about this
13 at the opening. But to make sure we understand this slide,
14 Professor Arcidiacono, can you tell me what you mean by WPM 23?

15 A. Right. So what I want to do is, across years, anchor
16 things to the same scale. So given that the WPM formula
17 changed in 2025 to 2027, I want to adjust it so that they're on
18 the same scale, weighting the same factors the same way. And
19 so I used the formula that they used in '23 and '24 and just
20 add up those components that way with the exception of the
21 RABs.

22 I should say, you know, this is how I like to present it.
23 But if you go to my report, you could find the same numbers for
24 just the straight WPM, and it's going to show similar patterns
25 to what we've got here.

1 So that's how we're going to calculate. We're going to
2 use that WPM 23 for this analysis. And then what we're going
3 to do is we're going to break it up into 10 deciles. So
4 Decile 10, that's got the top 10 percent of applicants on that
5 WPM.

6 I should say, this one does have the blue-chip athletes
7 and prep. I'll show you the table without them in a moment.

8 So at Decile 10, you've got the top 10 percent; Decile 1,
9 you've got the bottom 10 percent there. Okay?

10 The first panel has got the number of applicants. What
11 you can see is that, as you move down the White column, you
12 start off with a higher number. And then each time you go
13 down, you're going to a lower number. White applicants are
14 disproportionately in that top decile of applicants.

15 If you instead looked at Black applicants, you see the
16 flip of that. There's a blip between 9 and 8, but generally
17 the numbers are going down. As you go from Decile 10 to
18 Decile 1, the numbers are increasing.

19 So you start off with 22 Black applicants in that top
20 10 percent, but 346 in the bottom 10 percent. And that
21 corresponds to less than 2 percent of Black applicants being in
22 the top 10 percent of WPM scores and 28 percent being in the
23 bottom 10 percent. Okay?

24 **THE COURT:** If I can interject a question. That
25 includes blue-chip athletes in that number, correct?

1 **THE WITNESS:** This does. In a few slides, I'll show
2 you a table without those guys in there.

3 **BY MR. MCCARTHY:**

4 **Q.** Real quick, Professor Arcidiacono, you mentioned about the
5 WPM formula changing. And we won't show the formula, but do
6 you know why it changed in the midst of this five-year period?

7 **A.** COVID happened, and so we moved to more of a test-optional
8 system.

9 **Q.** And so did some applicants not take the SAT in those years
10 it was test-optional?

11 **A.** You know, it's surprising because most of them actually
12 did. The share is actually very low that don't.

13 **Q.** Okay.

14 Let's go to the next slide, Mr. Pusterla.

15 So did you also analyze admit rates according to these
16 deciles?

17 **A.** Yeah. So all this decile analysis is only relevant if the
18 WPM score -- even though they've calculated this in this WPM 23
19 way -- is related to your chances of admission. And if you
20 just look at that total column, you can see that it clearly is.

21 So as you move down WPM deciles, the admit rates fall. We
22 start off at over 90 percent; we end up at less than
23 30 percent. And that holds true for every decile. It's
24 falling every time.

25 **Q.** And does that hold true across races as well?

1 A. There's going to be some blips. For example, if you look
2 at the Black 9 versus 8, that sort of goes not the way you
3 would expect. But you have small samples in some of these
4 things. But the general pattern is that way.

5 If you compare Black applicants in that top decile,
6 Decile 10, they're admitted at a rate of over 95 percent. And
7 in the bottom one it's 40 percent.

8 Now, to your point, Your Honor, some of this at the bottom
9 decile is going to be driven by those blue-chip athletes, prep
10 pool, and we'll see how that changes in just two slides.

11 **THE COURT:** Just so we're clear, blue-chip athletes, I
12 think thus far in the trial, have been classified, and
13 particularly in certain sports, football and basketball, for
14 example.

15 **THE WITNESS:** We've got a broader definition than that
16 here.

17 **THE COURT:** Well, that's what I'm trying to clarify
18 just in terms of this. I believe that you need to clarify that
19 not all athletes -- it's disproportionate, I think is fairly
20 clear to me, perhaps for judicial notice, with respect to
21 football and basketball as opposed to other sports. That's the
22 point I'm making.

23 Did your analysis include that notion?

24 **THE WITNESS:** So we're treating them all the same
25 here, which means that, when I take them out, I'm taking out

1 the blue-chip athletes for all the sports. And there are
2 blue-chip athletes in lots of these sports.

3 THE COURT: Yes, but certainly not the same numbers?

4 THE WITNESS: Oh, that's right. Definitely not.

5 THE COURT: Certainly not.

6 THE WITNESS: And there are other differences there
7 too --

8 THE COURT: But just for judicial notice -- either
9 side can dissuade me of this, whatever -- it's abundantly clear
10 to me in terms of blue-chip athletes and numbers, the numbers
11 are going clearly to reflect football and basketball players in
12 excess of other sports, it seems to me. And either side can
13 deal with that accordingly if you want. But that's abundantly
14 clear to me.

15 THE WITNESS: No, that's totally the case.

16 THE COURT: You would concur with that?

17 THE WITNESS: I would totally concur with that.

18 But what I would also say is that, even if you're a
19 blue-chip athlete in tennis, you're going to get in. They're
20 all getting in. But it is disproportionately football, for
21 sure.

22 THE COURT: I understand. Right.

23 BY MR. MCCARTHY:

24 Q. Did you observe any differences across race in admit
25 rates?

1 A. Yes. So you're going to be starkest when you compare
2 White and Black from that perspective. And you can see pretty
3 big differences within each decile in that regard. So if you
4 look at, say, the 8th decile for Whites -- so this means you're
5 in the top 70 to 80 percent of the applicants there -- you've
6 got about a 50 percent chance of admission.

7 But if you're in the -- a Black applicant in the second
8 decile from the bottom, you're also going to have a 50 percent
9 chance of admission.

10 So we do see these stark racial differences. And now we
11 want to know how much of that is driven by the blue-chip
12 athletes in the prep pool applicants?

13 Q. Before we leave this slide, what is the overall admit rate
14 for this group?

15 A. It's a little bit less than 50 percent.

16 Q. And it's the number in the bottom right corner?

17 A. Exactly. 47.48 percent.

18 Q. Let's go to your similar analysis for the -- without
19 blue-chip and prep pool.

20 A. So now we've taken those guys out. I'm keeping the decile
21 the same, though. So that's why you can see, like, the decile
22 numbers are actually going down a bit. And that's because we
23 take out blue-chip athlete and prep pool, those people are
24 disproportionately coming from those bottom deciles.

25 Q. Okay.

1 Mr. Pusterla, could you highlight the total row on the
2 left half of the slide. It'll help illustrate.

3 A. Sorry. I think we actually want the column.

4 Q. Sorry. I meant the total column. Thank you.

5 A. So when we add the blue-chip athletes and prep pool in
6 there, these numbers are basically the same because that was
7 sort of the definition of a decile. You want to get 10 percent
8 in each. Now they're going down a bit as you're going to lower
9 WPM deciles.

10 Q. And is that what you would expect?

11 A. It probably depends on the sport and the prep, you know,
12 and so on.

13 Q. So did you find any racial patterns across these data?

14 A. I did. You can basically see the same pattern if we go to
15 White column in the first panel. We're again seeing that the
16 number of White students is falling as you're getting to lower
17 WPM deciles. So there's not quite twice as many White
18 applicants in the top decile as there is in the bottom decile.

19 Q. Let me ask you real quick, how many total applicants were
20 there in this group of non-blue-chip and nonprep applying
21 people?

22 A. 12,304.

23 Q. Earlier you mentioned about how there were relatively few
24 people that didn't take the SAT. Do you know how many of this
25 group of 12,304 were missing SAT scores?

1 A. So it's less than 1 percent that we can't get an SAT score
2 for.

3 There's one somewhat caveat to that in that, for the prep
4 pool, if they're applying for prep pool, we might be able to
5 get an SAT score for a previous year. But we've got the right
6 SAT score for them.

7 Q. Thank you.

8 Let's go to the next slide, Mr. Pusterla.

9 So this is similar to the one a couple slides back but for
10 the non-blue-chip and nonprep pool, correct?

11 A. That's correct. And so now as you go to that total column
12 and you go down, you even see more of a starker relationship
13 with the WPM. So now you start off in that top 10 percent, the
14 admit rate is 90 percent. But if you're in that bottom
15 10 percent, now your admit rate is at 3.5 percent. Okay?

16 And, really, you don't see that much of a difference
17 across races in that bottom 10 percent. That's not where the
18 action is happening.

19 The action is happening more in the middle of the
20 distribution. So as an example, if you compare White
21 applicants in the 8th decile, you're going to get an admit rate
22 for Whites of 46.6 percent. And that's just slightly smaller
23 than the admit rate for Black applicants in the 4th decile.

24 And you can also see -- you'll see in the 5th decile how
25 wide the gaps are across races here. So you can see that for

1 Black admits -- sorry -- 60 percent. If you're in Decile 5,
2 the admit rate for Blacks is 60 percent, while for Whites it's
3 20 percent.

4 Q. What is the overall admit rate for this group?

5 A. 38.43 percent.

6 Q. Let's go to the next slide.

7 Did you separately conduct a descriptive analysis
8 regarding admissions to NAPS, Professor Arcidiacono?

9 A. I did.

10 Q. Did you do the same for the other Navy prep programs?

11 A. I did not. They're sufficiently small that I didn't do
12 it.

13 Q. What does this slide display generally?

14 A. So it's going to give you the admit rates by race to NAPS
15 and nomination status subject to those sample restrictions I
16 outlined earlier, medically and physically qualified, complete
17 application, et cetera.

18 Q. What is the overall admit rate to NAPS?

19 A. 14.5 percent.

20 Q. Did you observe any variation across racial groups?

21 A. I did. You can see that Black applicants here, the admit
22 rate is a little less than 60 percent, whereas it's 7.3 percent
23 for White.

24 Q. Let's stop here for a moment and look backward.

25 What has your descriptive analysis shown so far?

1 A. Well, what we've seen is pretty big differences overall in
2 admit rates to both to U.S. Naval Academy and to NAPS. Some of
3 those racial differences in admit rates to Naval Academy are
4 driven by the blue-chip athletes and prep pool. But then you
5 can see White applicants are stronger on the things that are
6 related to admission to NAPS.

7 And you can see that with the WPM deciles. So they've got
8 higher WPM scores but much lower admit rates. That provides a
9 hint that there might be racial preferences operating here.
10 And, similarly, we see sort of large gaps in admit rates at
11 NAPS.

12 Q. Does your analysis thus far reveal the effect that race
13 has on admission to the Naval Academy?

14 A. No. I think we need to go further than that and actually
15 model the admissions decisions.

16 Q. What kind of a model?

17 A. Well, this is where the math is going to come in. And
18 we're going to do a logit model, L-O-G-I-T.

19 Q. Thank you.

20 So we're now on to the third step of your analysis?

21 A. Yes.

22 Q. So as you know, the math gets a little bit more
23 complicated here. Can you tell us at a high level, so we can
24 all understand a little bit, what a logit model is?

25 A. A logit model is a way of getting predicted probabilities

1 of admission that depends on the characteristics of the
2 applicants.

3 So we saw -- when we were doing all those summary
4 statistics, we were sort of going one by one. With this, we're
5 going to be able to account for all the other variables that
6 are in the data, control for them, and then see what happens
7 to, say, race, how race relates to admissions.

8 Q. What's the outcome that's being measured there?

9 A. The outcome is going to be admission.

10 Q. So is a logit model useful in a modeling admissions
11 decisions?

12 A. It is.

13 Q. In this pictorial representation, what are the inputs to
14 the logit model for Naval Academy admissions?

15 A. I think we're on the wrong slide here.

16 Q. Yep. We've got to go back to 29.

17 Hold on a second. 22. Sorry.

18 Let me ask that question again. In this pictorial
19 representation, what are the inputs to the logit model for
20 Naval Academy admissions?

21 A. So what the logit model is going to do is it's going to
22 take all these characteristics, such as the demographics --
23 these are going to be your race, your gender, measures of your
24 high school, first-generation status, and such. It's going to
25 take all those components of the WPM, what cohort you're

1 applying from -- because some cohorts could be more competitive
2 than others -- and then, you know, the Navy process, the Naval
3 Academy process, the slates matter.

4 So we're going to take into account the characteristics of
5 the slates that you're on. And out of that logit model is
6 going to pop a probability of admission and a probability of
7 rejection.

8 Now, why is it a probability? Because you can't account
9 for everything. Okay? That's sort of the point of holistic
10 admissions. There's going to be some unobservable associated
11 with that. So we're only going to be able to get
12 probabilities.

13 Q. Now, real quick, can you tell me just what do you mean by
14 observable versus unobservable so everyone understands?

15 A. So an observable is something that we're actually
16 controlling for in the model. Okay. So if I estimate a model
17 without WPM scores, the WPM would be in the unobservable then;
18 if I control for the WPM scores, they're part of the
19 observables now.

20 But there could be other things that we don't -- are not
21 one of these gears, and that would be something that would be
22 in the unobservable.

23 Q. What is your goal with a logit model?

24 A. So the goal is to have a model that predicts admission
25 well and where you can credibly interpret the coefficients.

1 Q. At the bottom of this slide here, what does this equation
2 represent?

3 A. So this represents taking all those characteristics that
4 are associated with those gears and we're thinking about how
5 those things are going to end up affecting the probability of
6 admission. And so this is going to be sort of an index that
7 enters into this logit expression for the probability.

8 So we're going to have -- we're going to control for a
9 whole bunch of stuff, not just the things I've listed here.
10 But you control for SAT math. And then that A represents the
11 coefficient on SAT math.

12 Q. What is a coefficient?

13 A. It's literally just a number. If it's a positive number,
14 it would say that after controlling for all these other things,
15 does this thing have a positive relationship with admissions?

16 If it was a negative number, it would say that after
17 controlling for all these other things, there's a negative
18 relationship with admission.

19 Q. What does the coefficient with a capital R represent?

20 A. So we're going to define race how I already defined it.
21 So we'll have a coefficient on Black, a coefficient on
22 Hispanic, a coefficient on Asian American. Those coefficients
23 are relative to a normalized choice, which in this case is
24 White. So everything is interpreted relative to White
25 applicants.

1 If we see a positive number on, say, the Black variable,
2 then, that would indicate that, after accounting for all these
3 things, being Black helped you in terms of your admission. If
4 you saw it was negative, it would be the other way around.

5 We've chosen to normalize it with respect to White. You
6 could normalize it with respect to anything. If you normalize
7 it with respect to Black, then all of the coefficients would
8 just end up being negative on the other races. It doesn't
9 matter how you write it.

10 Q. So it's all relative to a baseline?

11 A. Exactly.

12 Q. What would be the coefficient for that baseline?

13 A. Zero.

14 Q. What about the magnitude of a coefficient? Does that
15 matter?

16 A. It does. And in particular it matters when the scale of
17 the things are the same. So if you saw that the coefficient on
18 Black was larger and positive than the coefficient on Hispanic,
19 then that would tell you racial preferences are larger for
20 Black applicants than they are for Hispanic applicants.

21 Q. What can you do with the output of your logit model?

22 A. You can do a number of things. One of them is you can
23 predict admissions probabilities. And you can do that both
24 using the characteristics as they stand but also changing them.

25 So we could see what would happen if, for example, we

1 turned off the coefficients on race. That would effectively
2 treat in the model everyone as though they were White but
3 holding their other characteristics fixed. From that, we would
4 also get a probability that they would be admitted with their
5 racial preferences turned off.

6 Q. When you say, for example -- when you say "turned off,"
7 like, let's say you wanted to, as you said, turn off the racial
8 preferences for an Asian American student. How would you do
9 that in the logit model?

10 A. I would set the Asian American coefficient to zero. That
11 would treat them as though they were a White applicant.

12 Q. Can you use the output of the model to determine the
13 strength of individual applicants?

14 A. We can. So the way I would do that is, if you take all
15 the characteristics outside of race, outside of the stuff that
16 we're putting preferences on, you can combine all the terms
17 that are on this slide -- so the A times the SAT math, the B
18 times the extracurricular rating -- put them all together, and
19 now you've got what we call an admissions index.

20 And that can measure sort of the relative strength of the
21 applicant on the things that is revealed that USNA cares about.
22 So before, we were working with the WPM 23 decile. So that's
23 saying this is what they care about. The logit model is going
24 to reveal what they care about and whether they treat all WPM
25 components the same.

1 Q. Did you use the outputs of your model in connection with
2 work you did with Richard Kahlenberg in this case?

3 A. I did.

4 Q. Let's talk about that briefly. Did you use the same
5 models that you used here?

6 A. I did.

7 Q. How did you work with Mr. Kahlenberg?

8 A. So Mr. Kahlenberg is interested in race-neutral
9 alternatives. So we're going to turn off or set the
10 coefficients on race to zero. And then, per his instruction,
11 I'm then going to adjust some of the other coefficients in the
12 model, for example, giving a bonus to first-generation college
13 students or something along those lines.

14 Q. So you handled the technical aspects of that?

15 A. Yes.

16 Q. Is it possible that there are factors that the Naval
17 Academy considers that your logit model does not take into
18 account?

19 A. For sure. That's why we have probabilities here. There's
20 always going to be unobservables in the model.

21 Q. Are your models reliable notwithstanding the fact that
22 there are these unobserveables?

23 A. They are. This is standard for economics.

24 Q. Are your models able to predict Naval Academy admissions
25 with a high level of accuracy and reliability notwithstanding

1 the unobserveables?

2 A. They are and much better than most peer-reviewed work on
3 the U.S. because they don't have near the data that I have
4 here.

5 Q. How do you go about building a logit model?

6 A. So what I'm going to do is I'm going to gradually add
7 different variables and see what happens to those results as I
8 add more and more variables, and this is sort of standard
9 practice in economics to sort of show what adding more controls
10 does to the preferences.

11 So then you can see, well, once you account for the WPM
12 components, how does that change what we estimate the racial
13 preferences to be?

14 So what Figure 4.1 does is it shows you the different
15 models that I'm estimating. And this is actually a correction
16 of the figure in the report. I think I said that there were
17 seven models. We corrected it at deposition. This is the
18 right description of those -- of the models.

19 Q. Why is it that you have eight models here?

20 A. Well, I want to know how adding different characteristics
21 affects our estimates of racial preferences and then, through
22 that, learn what characteristics matter.

23 Q. Is it common practice in econometric modeling to have
24 several iterations of models like that?

25 A. Oh, definitely. It's sort of like showing you work.

1 Q. By the way, I know you used the word "control"
2 sometimes --

3 A. That could be variables, would be another word for it.

4 Q. What controls do you have in these models?

5 A. So in Model 1 it's just a baseline model that has your
6 race, whether you're female, and indicators for each
7 application cohort. And then everything sort of builds off of
8 it.

9 So for Model 2, then we add household and community
10 demographics, first-generation college, and stuff like that.
11 Then we add the WPM components with the exception of the RAB,
12 and then the fitness score.

13 Now, here, we're sort of restricting all those WPM
14 components to operate the same way in years where it was
15 test-optional. Chances are, that matters.

16 So in Model 4, we allow the effect of the things that
17 changed the WPM formula to have a different effect in those
18 later years. So we might expect, since the SAT was optional,
19 that SAT may not matter as much in the later admissions cycles
20 as they did in the earlier admissions cycles. So Model 3 does
21 that interaction.

22 Model 4 gets into some features that -- of USNA in that
23 we've got the different ways that you're nominated and
24 characteristics of the slates where you received a nomination.

25 Q. Professor Arcidiacono, I think you just said Model 4. I

1 think you meant Model 5.

2 A. Sorry. Model 5 is Model 4 plus, yeah. So right.

3 Q. Is that because you're adding variables or controls --

4 A. We're adding to the model for that information, yes.

5 Sorry.

6 Q. That's okay.

7 A. So when we think about the characteristics of the slates
8 that might be relevant, it's going to be easier to get in on
9 slates where you don't have much competition, so if you're the
10 only qualified applicant that's been nominated. It's also
11 going to be easier for you to get in if the other candidates
12 have lower WPM scores so you might beat them. It's also going
13 to be easier to get in if you're ranked -- if you're on one of
14 those principal ranked slates and you get ranked number one.

15 Those are the kinds of things that we're accounting for
16 here. And if you don't do a good job, you're not going to have
17 a very accurate model.

18 So then when we get to Model 6, we're adding variables for
19 legacy. And we put in indicators for whether you received any
20 RAB points for particular types of classes and indicator
21 variables to reflect performance on that BGO interview.

22 And then Model 7, now we actually do with the RABs. And
23 when we get to the results, I'll sort of show why we treat
24 those differently.

25 And then one of the issues is there is some missing data.

1 We don't always know parental income. And so what Model 8 does
2 is say, well, let's just focus on only the observations where
3 we've got all the data. How does that affect our results?

4 Q. Now, this says "Controls used for opening report" at the
5 top of this table.

6 Did you make any changes to your models between your
7 opening report and your rebuttal report?

8 A. I did. So in my opening report I didn't know that this
9 SAT math score of 200 was actually a placeholder. And so for
10 .7 percent of these applicants, they had a 200, but it really
11 meant they're missing their SAT score.

12 Q. Is this the group you mentioned before that was less than
13 1 percent that were missing an SAT score in the later years?

14 A. Exactly. So in my rebuttal report, I added a control for
15 whether you were missing your SAT score. That's the only --
16 basically, anytime I'm controlling for SAT scores, I had that
17 placeholder in there to reflect that.

18 Q. And would that make it so the model would not count those
19 as actual scores?

20 A. That's right. It would basically -- the estimate of the
21 coefficient on that variable would sort of be able to tell you
22 what the SAT scores would have been like for those people
23 that's missing.

24 Q. Okay.

25 Mr. Pusterla can you go to Number 25.

1 Professor Arcidiacono, what do you display in this slide?

2 A. So these are estimates of some of the coefficients in my
3 logit model. You can see in those bottom rows all the
4 different kinds of things I'm controlling for in them. And
5 then I'm only going to report the coefficients for race, female
6 first-generation college, and household income less than 80,000
7 here because otherwise we'd have pages and pages.

8 Q. Let me stop you for a moment. So, as you've said, the
9 bottom half of this table, does that show the controls that you
10 were discussing on the previous slide?

11 A. Yeah, the classes of controls that we're using.

12 Q. So what do the coefficients here on race reveal to you?

13 A. So when you don't put in any controls, basically, Black,
14 Hispanic, and White applicants all sort of have the same chance
15 of admission. But for -- we should have clarified that the
16 sample here does not have the blue-chip athletes and prep pool.
17 They're out because they're basically automatically -- they're
18 admitted.

19 For these non-blue-chip athletes and nonprep pool, if you
20 don't control for anything, you're going to see that Black,
21 Hispanic, White applicants get treated similarly and that you
22 see a positive and significant coefficient for Asian American.

23 Now, what we do is we're moving along to Model 2, Model 3,
24 and so on. We're adding controls. And what you'll see for the
25 Black coefficient is, each time you add these controls, it's

1 getting larger. Okay?

2 And what's happening there is you're taking some things
3 that were previously unobservable and now they become
4 observable for these later models. So for Model 1, SAT score
5 was part of the unobservable, but when we get to conjoined for
6 WPM components, it's part of the observable.

7 These numbers are very large. And one of the difficulties
8 about working in this world is conveying the size of logit
9 coefficients. So we're going to have other ways of doing it to
10 make these things more interpretable.

11 But this really stands in contrast to what you typically
12 see for, say, discrimination studies. Typically, you start
13 with a raw gap that is big. And as you add controls, it goes
14 away. Here, it's the opposite. As you add controls, it
15 increases showing larger and larger racial preferences.

16 Q. What do you see in the second row for Hispanic?

17 A. You see the same pattern. The one difference is in
18 Model 7. That's where we've added the RABs. Okay? And you
19 see a small drop for Hispanics there. The number for Blacks
20 actually went up. And it's a small drop for Asians there.
21 But, basically, adding in the RABs has very little effect on
22 these logit coefficient estimates.

23 Where you do see adding the RABs mattering is when you
24 look at first-generation college and household income less than
25 80,000. So what you'll notice in Model 2, you see a big

1 negative coefficient there on first-generation college and
2 household income less than 80,000. But it basically goes to
3 zero once you put in controls up through Model 6. So at
4 Model 6, no preferences given to those who are first-generation
5 college or those making less than 80,000.

6 When you add those RABs it comes out negative. Well,
7 that's sort of strange, right? But the RABs are giving you
8 points for being these things. But that's not translating into
9 higher admissions probabilities. That's why we actually are
10 going to work with Model 6 as my preferred model. I think it's
11 much easier to interpret the coefficients because of that issue
12 about the RABs.

13 Oh, I should say with Model 8 you actually see much bigger
14 preferences, which is another point to my model being
15 conservative, like if you take out those observations that are
16 missing data.

17 **Q.** If we look at the bottom row of this table, what does that
18 show?

19 **A.** The bottom row shows what's called the pseudo R-squared,
20 which is a measure of fit. These are very high in comparison
21 to most other papers here, and that's because we fit the data
22 so well. And you can see, you know, at the beginning in
23 Model 1, it's very small. You have to have these controls to
24 fit the data well.

25 **Q.** Now, you mentioned that Model 6 is your preferred model,

1 and I think you've said it's because in part of the RAB issue?

2 A. Yeah. I find the RAB components hard to interpret, but it
3 wouldn't matter if we controlled for those RABs. You can see
4 that the estimates are really not that much different except
5 for that first-generation college, household income. That
6 makes interpreting the household income difficult because
7 they're being affected through RAB points.

8 Q. Remind us again. What is the sample set here for this
9 logit model?

10 A. So this, you have to complete your application, pass those
11 medical and physical exams, have a nomination, and we're
12 tossing out the blue-chip athletes and those coming from the
13 prep programs.

14 Q. So what is the effect of racial preferences on blue-chip
15 athletes?

16 A. Well, it's going to be zero. And the reason it's going to
17 be zero for blue-chip athletes is they all get in. So there's
18 no scope for race to matter.

19 Q. Okay.

20 Let's go to the next slide, Mr. Pusterla. Let's go to
21 Slide 26.

22 Does the output of your logit model enable you to quantify
23 the effect of particular variables on admissions outcomes?

24 A. It does. And so we're going to take those logit
25 coefficients and then show, you know, what does that actually

1 mean in terms of admissions chances? And we're going to do
2 this sort of four ways.

3 Q. And can you tell us a little bit about those four ways.

4 A. So for the transformational analysis, what we're going to
5 do is say suppose you were a White applicant who had a
6 25 percent chance of admission. How much higher would your
7 probability be if you were instead treated as a Black
8 applicant, we held all of your other characteristics fixed?
9 And, again, this is only for non-blue-chip athlete, nonprep
10 pool.

11 That's taking a particular slice, someone who has a
12 25 percent chance of admission.

13 When you do average marginal effects, what you're doing is
14 saying what are the predictive probabilities of admission for,
15 say, Black applicants? And then what would they be if you
16 turned off the effects, so set the Black coefficient to zero?
17 Now what are those predicted probabilities?

18 The difference between those two tells you how much on
19 average those probabilities of admission change as a result of
20 race. And that's a standard approach in economics.

21 The third, we called the admitted minority analysis.
22 What's different about this is, when you're doing average
23 marginal effects, you only have what's -- the observables. But
24 you know that the minorities who are admitted, they had to be
25 pretty good on the unobservables too to be admitted, or have

1 better unobservables anyway.

2 What we can do with the admitted minority analysis is take
3 all minorities who were admitted and the say, okay, what would
4 their admit probability be if we took away the racial
5 preference? We know they got in with racial preferences. What
6 are their chances of getting in without racial preferences?

7 Now, the first three ways, that's like what you'd doing if
8 you just changed one person. If you actually got rid of racial
9 preferences, took away preferences, more spots are going to
10 open up. Okay? Navy has still got to fill its class.

11 So what the capacity constraints analysis does is it
12 shifts the standard to get into the class. Essentially, we're
13 going to still fill the class.

14 Q. Now, are all of these methods ones that you used in the
15 *Harvard* and *UNC* cases?

16 A. They are.

17 Q. So there's definitely a little bit of math here, but we'll
18 try to keep it at a high level.

19 Professor Arcidiacono, what is your methodology for this
20 transformational analysis here?

21 A. So you recall that we talked about that admissions index,
22 which sort of gives you that strength of the applicant. And so
23 we could think about a White applicant who had a 25 percent
24 chance of admission. Well, the logit formulas, that $\text{EXP of } A$
25 over $1 \text{ plus } \text{EXP of } A$, and we know that's the admissions

1 probability.

2 So basically that equals .25, 25 percent. And you solve
3 for A to tell you what the index value would be. That's the
4 minus 1.098.

5 Then we say, okay, let's add to that A, the admissions
6 index, the coefficient on, say, African American, which is
7 2.958 in my preferred model. When you add that -- those two
8 numbers together, now you plug that in to the logit formula
9 again. And that's where you get 86.5 percent.

10 Q. Let's go on to the next slide. And what do you display on
11 this slide?

12 A. So this is showing preferences -- this transformational
13 analysis, so basically giving racial preferences to White
14 applicants and saying, okay, if you were White and had a
15 particular chance of getting in, what would your chance be if
16 you were treated as a different race?

17 So you can see, for example, in Panel C, if you had a
18 25 percent chance of admission and you were White; you'd have
19 an 86.5 percent chance of being admitted if you were Black;
20 52.4 if you were Hispanic; and 58.7 if you were Asian American.

21 Q. Let me stop you there for a minute. And this is for a
22 White applicant who is non-blue-chip and not from the prep
23 pool?

24 A. That's correct. And I just want to clarify, this is from
25 my pooled model. All the models I described are my pooled

1 models. I estimate a separate set by -- for the early time
2 period of 2023 and 2024 and 2025 to 2027. There you can see
3 does race matter differently then.

4 Q. And by pooled model, do you mean the entire five-year --

5 A. Entire five-year period.

6 In the next two columns, I'm doing the same analysis but
7 with models that were estimated just on the first two years and
8 then the last three years.

9 Q. Let's go on to the next slide.

10 Could you explain your methodology for calculating average
11 marginal effect.

12 A. Yes. So if we take all of those things that made up that
13 admissions index, including the race coefficient -- so you
14 calculate the probability of admission with the racial
15 preferences turned on using that logit formula.

16 Now what we're going to do is we're going to shut off --
17 set those race coefficients to zero and recalculate the
18 probabilities. We can actually do this for every applicant of
19 a particular race, get your probability admitted with the
20 racial preference turned on, subtract off the probability of
21 being admitted without the race coefficient turned on.

22 That gives you have the marginal effect of race. How much
23 did your admissions chances increase as a result of the racial
24 preference?

25 Q. What is it that the average marginal effect of racial

1 preference is showing us as a statistic?

2 A. It's going to show us that the average change in the
3 admissions probability across that set of applicants we're
4 looking at -- the non-blue-chip athlete, nonprep pool --
5 completed their application and all that stuff.

6 Q. Is average marginal effect a metric that economists
7 commonly use to quantify the effect of a variable on an
8 outcome?

9 A. Yes. Yes, that's the standard.

10 Q. So then what do you display on this slide?

11 A. So now we're looking at that average marginal effect of
12 race. I'm just going to focus on the pooled model, which is
13 Panel A.

14 And what you can see overall is that the Black admit rate
15 with racial preferences is 37.4 percent. If we turned off that
16 big logit coefficient on Black, the admit rate without racial
17 preferences, that's 12.9 percent. So that's a pretty big drop
18 in those probabilities. The difference between those two gives
19 you your average marginal effect, which is 24.5 percentage
20 points.

21 Q. And using that same methodology, what is the average
22 marginal effect on Hispanic for across that five-year period?

23 A. 11.4 percentage points. And for Asian Americans, it's
24 17.2 percentage points.

25 Q. And, again, this sample here that you're analyzing does

1 not include blue-chip athletes or applicants from the prep
2 pool?

3 A. That's correct.

4 THE COURT: It does not include blue-chip athletes and
5 what? I'm sorry, Mr. McCarthy.

6 MR. MCCARTHY: Applicants from the prep pool.

7 THE COURT: Yes.

8 MR. MCCARTHY: We can go to the next slide. I'm
9 sorry. Back up one. You were ahead of me.

10 You're too good at this, Mr. Pusterla.

11 BY MR. MCCARTHY:

12 Q. What do we have here?

13 A. This is just a graphical representation of those same
14 exact things. You know, the Black admit rate without racial
15 preferences was 12.9 percent; with racial preferences, it's
16 37.4 percent. The difference between the two is the average
17 marginal effect of 24.5 percent.

18 Q. We can go on now to the next slide.

19 Can you explain your methodology for determining the
20 effect of racial preferences in this model?

21 A. I can. This is the one I sort of get excited about, which
22 maybe other people don't, because it uses Bayes' rule.

23 But here, the goal is to determine the probability that a
24 minority applicant who was admitted when the Naval Academy's
25 racial preference is in place would still have been admitted if

1 they have been treated as a White applicant.

2 And it works out there's a very nice formula that we can
3 use where -- that we can use the logit predicted probabilities
4 to figure this out.

5 So what -- it's on that left-hand side of the equation, is
6 the probability of being admitted, given that you're not
7 getting racial preferences, conditional on the fact that you
8 were admitted with racial preferences. And what Bayes' rule
9 does is it says that can actually be expressed by the
10 probability that you would have been admitted both without
11 racial preferences and been admitted with racial preferences.
12 And then you divide by just the probability of being admitted
13 with racial preferences.

14 But the key is, in that numerator there, is if you were
15 admitted without racial preferences giving you a bump in terms
16 of your probability, you'd still be admitted, right? Because
17 we know you were admitted without racial preferences, having a
18 preference added on, that's not going to change it.

19 So we can use the logit model to get both the denominator
20 and the numerator and tell you what their admit probabilities
21 would be for USNA admits if we took away racial preferences.

22 **Q.** Let's move on to the next slide.

23 And before we start talking about the numbers here, again,
24 this analysis excludes the blue-chip and the prep pool
25 applicants?

1 A. That's right.

2 Q. What does this slide reveal about the racial preferences?

3 A. So, again, I'm just going to focus on Panel A, which is
4 the pooled model. And what you can see is -- keep in mind,
5 this is all relative to 100 percent admit rate, right? Because
6 with racial preferences, these guys were admitted.

7 So for Black admits to USNA, if we took away racial
8 preferences, this would say their average admit rate would be
9 32.7 percent. And over 70 percent of them would have a drop of
10 their admissions probability of more than 50 percent. So these
11 are --

12 Q. Now, on that, you said that you're starting from someone
13 who was admitted, correct?

14 A. That's right.

15 Q. So what percent chance would they have of getting in?

16 A. 100 percent.

17 Q. So what do you mean by the 50 percent drop?

18 A. So we're starting off with 100 percent and then saying
19 calculate their probability of being admitted without the
20 racial preference. Now we're moving from someone who was for
21 sure an admit to someone who is more likely than not a reject.

22 Q. And is that the number reflected there in that cell?

23 A. That is.

24 Q. Could you tell us the results, then, for Hispanic and for
25 Asian admits within that five-year period.

1 A. So for Hispanic admits, it was 67.3 percent. The share
2 with a greater than 50 percent drop was 30 percent. And then
3 for Asian Americans, it was 68.7 percent of the Asian American
4 admits would be admitted. And here the bigger than 50 percent
5 drop was 27.2 percent.

6 Q. Now, at the start of this discussion about these various
7 methodologies, you said the first three were similar, correct?

8 A. That's right. And that's because what we're doing is
9 we're just taking the race of particular applicants who might
10 be averaging across the pool, but we're not dealing with
11 capacity constraints there.

12 Q. So far, what does your analysis here on the effect of
13 racial preferences tell you?

14 A. Oh, that there are large racial preferences present for
15 non-blue-chip athlete, nonprep pool applicants.

16 Q. Let's move on to Slide 34.

17 Can you tell us about your capacity constraint
18 methodology.

19 A. Yes. So we know the Naval Academy has a limited number of
20 seats. Without racial preferences, minority admission
21 probabilities decrease, which means fewer of those seats are
22 filled. So, accordingly, we've got to adjust everybody's
23 admissions probability so that we fill the class.

24 So we're going to adjust what's called the intercept of
25 that admissions index up a bit so that it exactly matches the

1 number of admitted applicants as in the data. So we're holding
2 that number of admits fixed.

3 Q. Let's go to Slide 35.

4 What do you display in the first row of Panel A here?

5 A. So the first row of Panel A --

6 Q. First row. There we go.

7 A. -- is showing for the classes of 2023 and '24 the number
8 of actual admits in the data for these non-blue-chip athlete,
9 nonprep.

10 So you see it 1,693 White admits. And keep in mind, the
11 way I'm going to do this analysis is these numbers apply to the
12 whole class. Okay? So it includes the blue-chip athletes and
13 the prep pool, but I'm holding their admissions decisions
14 fixed.

15 So if we get rid of the racial preferences just at the
16 Naval Academy, it's only the non-blue-chip athletes, nonprep
17 pool students who are affected from removing racial preferences
18 to admission to the Naval Academy itself.

19 Q. What then is shown in the second row in Panel A there?

20 A. The second row shows the number of admits by race if we
21 took away those racial preferences. And you can see that, you
22 know, we're changing the -- changing it so that -- we've taken
23 away the preferences for minorities, but then we're making it
24 easier for everybody to get in so that the total number of
25 admits lines up.

1 So the last column, no change in total admits.

2 Q. So what is the net effect on Black applicants for the
3 classes of 2023 and 2024?

4 A. There would be 56 less Black applicants using this.

5 Q. That means without racial preferences?

6 A. Without racial preferences.

7 Q. What about for Hispanic applicants in those same two
8 years?

9 A. 31 less. And for White -- for Asian American, 70; and
10 then White would go up by 162.

11 Q. If we go down to Panel C, that's for the years 2025
12 through 2027, those classes, correct?

13 A. That's correct.

14 Q. What do we see in terms of deltas there?

15 A. So now the number of White admits would go up to 273. The
16 number of Black admits would fall by 109. The number of
17 Hispanic admits would fall by 73. And the number of Asian
18 American admits would fall by 86.

19 Q. So, for example, if we wanted to know the net effect of
20 racial preferences on Black applicants over the course of those
21 five years, what would you add up?

22 A. We'd add the minus 56 to the minus 109.

23 Q. And that gets you how many?

24 A. 165 less.

25 Q. Over the five years?

1 A. Over the five years.

2 Q. Let's move on to the next slide.

3 Can you explain to us what a nested logit is.

4 A. Yes. So I'm sure you've heard about how complicated
5 admissions works at Naval Academy with slate winners and such.
6 And we've approximated that with my logit model.

7 The nested logit model is going to allow us to look to see
8 whether these different channels of admissions, be it through
9 congressional slate winner or qualified alternate or additional
10 appointee, do we see racial preferences in all of them? Some
11 of them? How is that operating?

12 So a nested logit is basically a logit within a logit.
13 We're going to treat the admissions process sort of operating
14 in two stages. First, the decision to admit, and then second a
15 decision on the channel through which to admit the applicant.

16 Now, it's really key that with the second logit we're
17 really comparing relative racial preferences because we're
18 looking at the admits here. So we'll be able to tell you
19 whether qualified alternates get a bigger racial preference
20 than congressional appointees or the other way around.

21 Q. Do all four of those admissions channels go into the
22 nested logit?

23 A. So as it turns out, there are very few people who come in
24 through the service channel -- sorry. Let me back up.

25 In order to get to these congressional slate winners or

1 additional appointees, you almost always have to have a
2 congressional nomination. Okay? Virtually no one in one of
3 those service channels who's admitted through one of those
4 channels has a congressional nomination. So we're pretty much
5 able to segment things into do you have a congressional
6 nomination or not?

7 When you do that, you can treat the service-connected
8 separate and then look for your nested logit just for the
9 congressional, qualified alternate, and additional appointees.

10 We're actually even in better shape than that because, for
11 additional appointees versus qualified alternates, the WPM
12 score sort of works as a cutoff as to which one you could be
13 assigned. The higher WPMs are going to be qualified
14 alternates; the lower ones, additional appointees.

15 So we're actually able to split it up. For people who
16 have high enough WPMs, we'll be looking at whether they get in
17 as a congressional slate winner or a qualified alternate.

18 For those who are admitted with lower WPMs, they're going
19 to be either getting in as an additional appointee or a
20 congressional slate winner.

21 Q. And then what do you do with the service-connected
22 nominees?

23 A. That, we can treat as a separate logit.

24 Q. So you do a normal logit model on those?

25 A. Exactly.

1 Q. Earlier you talked about the controls or variables that
2 you will add to your models, what controls did you include in
3 your service-connected logit model?

4 A. So many of the same controls we had in my preferred model,
5 the exception is we don't have characteristics of the slate
6 there and such. It's actually a fairly small share; so we have
7 to take out a few other variables in terms of nomination
8 sources.

9 Q. What controls did you include in your nested logit models?

10 A. Basically the same controls as in my preferred model.

11 Q. What do you display in this slide?

12 A. So these are estimates from that nested logit model. And
13 like I was saying before, when we think about qualified
14 alternate and additional appointee, that's relative to
15 congressional. Okay?

16 And so that Black coefficient on qualified alternate says
17 that the racial preference given to Black applicants is higher
18 in the qualified alternate channel than it is in the
19 congressional channel. And for additional appointees, it's a
20 lot higher than it is in the congressional channel. But then
21 you can go to the third column and see what it's like for the
22 congressional channel. And there you see that you also have a
23 preference there.

24 So the preferences for qualified alternate and additional
25 appointees are actually bigger than the ones for congressional

1 slate winners. That holds for Black applicants.

2 For Hispanic and Asian American applicants, you don't see
3 that significant effect. So what that means is the racial
4 preferences for Hispanic and Asian American applicants are the
5 same on the congressional channel as they are in the qualified
6 alternate channel.

7 Q. And that's a function of them being the qualified
8 alternate and the additional appointee coefficients being
9 relative to the congressional?

10 A. Exactly.

11 Q. Let's go to the next slide.

12 Now, you've discussed doing an average marginal effect
13 analysis before on the entire admissions models.

14 What is it you're doing here?

15 A. So here, now we're going to turn off race across all those
16 different admissions channels. So I just made this a more
17 complicated model. And at the end of the day, we're going to
18 get average marginal effects out of that model. I can make
19 that calculation here. And those average marginal effects look
20 for similar to what I got when I just did my logit.

21 Q. What does that tell you?

22 A. It provides more evidence of the robustness of the model.
23 We're using sort of the same variation, but now it's a
24 different model because of the channels.

25 Q. Let's go to the next slide.

1 A. So what was really fascinating to me about this whole
2 thing is, you know, with qualified alternates, you think, man,
3 how could there ever be scope for racial preferences? You just
4 take the highest WPM folks.

5 But what happens is instead, over the course of the cycle,
6 we have a set of people who are labeled as qualified
7 alternates. But then that changes. The cutoff changes over
8 time. And that happens because, of course, people are turning
9 down the Naval Academy to go to other schools.

10 And so now -- what do we do now as we -- we're going to
11 have to shuffle some -- move some people around.

12 So, what I'm showing on this slide is, among the documents
13 I saw in discovery, what the highest cutoff was for qualified
14 alternates in each admissions cycle. That's what's reported in
15 the first column. And you can see all those numbers are higher
16 than what the actual QA cutoff is.

17 So at the end of the cycle we know the lowest QA,
18 qualified alternate, had a WPM score in 2023 of 72,056. But at
19 another point in the process, there was a set of people that
20 USNA labeled as qualified alternates temporarily, and that set
21 had 75,000 -- the lowest score there was 75,479. And so over
22 time that QA cutoff became lower.

23 Q. And there's a number of people between the initial
24 threshold and the final threshold?

25 A. That's correct.

1 Q. And what do you show in the last column of this table?

2 A. So the way to think about this is you're going to get a
3 hundred -- during this time period, you have 150 qualified
4 alternates in each year. And what this is saying is how many
5 of those qualified alternates were between the highest
6 threshold and the final threshold?

7 So you have 68 of the 150 for the class of 2023 that were
8 in that range between the two thresholds.

9 Q. Now, you're showing here that that column is the QA
10 winners that were between those two thresholds, correct?

11 A. Exactly.

12 Q. So were there QA losers between those thresholds?

13 A. Oh, definitely.

14 Q. Meaning some people above the final threshold for
15 qualified alternates did not actually get admitted?

16 A. Exactly.

17 THE COURT: Ronda, do you want to take a
18 late-afternoon break now? Ms. Thomas, are you good?

19 All right. We'll stop for about 10 minutes here and take
20 a break.

21 MR. MCCARTHY: Very good.

22 THE COURT: We'll start again at 4:00 and go until
23 5:00.

24 How much longer are you going to be, Mr. McCarthy?

25 MR. MCCARTHY: I think maybe 30 minutes? 45? Maybe

1 less?

2 **THE COURT:** I suspect cross-examination will be -- of
3 the gentleman will be tomorrow, then. That's fine. We'll just
4 go. We'll start at 4:00, and we'll see how far we go.

5 **THE CLERK:** All rise. This Honorable Court is now in
6 recess.

7 **(There was a break at 3:47 p.m. to 4:06 p.m.)**

8 **THE COURT:** All right. You all may be seated.
9 Mr. McCarthy, you may continue.

10 **MR. MCCARTHY:** Thank you, Your Honor.

11 **BY MR. MCCARTHY:**

12 **Q.** Professor Arcidiacono, what is the title of the slide?

13 **A.** "Shares of candidates above and below the initial QA
14 cutoffs."

15 **Q.** What do you observe about the admit shares above and below
16 the initial qualified alternate cutoff?

17 **A.** So what you can see is that the racial distribution of
18 those in the first panel for those above the initial threshold
19 looks a lot like the racial distribution of those who are in
20 between that high threshold and the final one.

21 So that's the first two columns.

22 And then in the third column you can see that, if we look
23 at those -- these are just people who have those scores above
24 the initial threshold and in between the two thresholds.

25 In that third column these are the people who actually get

1 admitted as QAs who are above the high threshold. And you can
2 see that that racial distribution looks a lot like the
3 distribution in Column 1.

4 So when we think about that first QA cutoff, I don't think
5 race is playing much of a role there. But when you go to that
6 in-between, those people between the initial cutoff and the
7 final one, now in that fourth column you see a big difference
8 in the racial shares.

9 You went from a distribution in the population of over
10 72 percent White to less than 55 percent White. And,
11 correspondingly, the numbers for the other racial groups go way
12 up.

13 So that tell us you once we get outside of that initial
14 cutoff, this is where race really played a role among QAs. And
15 that makes sense to those nested logit results that I showed
16 where the preferences -- racial preference for qualified
17 alternates were actually bigger than for congressional slate
18 winners.

19 Q. Did you conduct additional analysis regarding qualified
20 alternates?

21 A. I did.

22 Q. Did you estimate a logit model of qualified alternate
23 admissions?

24 A. I did.

25 Q. What's the sample on this model?

1 A. So I'm going to focus on the second panel -- sorry --
2 Models 4 through 6. And for that, it's just people who had WPM
3 scores within that range, you know, between the high threshold
4 and the final one.

5 Q. And this is across the five years?

6 A. Across the five years, and you can't have been admitted
7 through some other channel.

8 Q. So what is the actual sample size here?

9 A. 753, though a couple that are missing have something
10 missing; so we go to 751 in the later models.

11 Q. Again, that's across the five-year period, correct?

12 A. Correct.

13 Q. And what do the coefficients here show?

14 A. Well, they show that the preferences are really large in
15 that window between the two thresholds. And they grow if you,
16 you know, add controls such as the WPM.

17 Q. Let's go to the next slide.

18 Can you explain what you display in this figure.

19 A. So what we're going to do now is we're going to bend your
20 WPM score into thousand-point bins.

21 Q. What do you mean by that?

22 A. So take everybody within, you know, 55,000 to 56,000;
23 they'd be in one bin. But we're going to normalize it with
24 respect to that QA -- final QA cutoff.

25 Q. What's that represented by on the X axis of this?

1 A. The zero.

2 Q. The zero. Thank you.

3 A. So you can see all the people with negative numbers there,
4 they have WPM scores that were below the final QA cutoff. And,
5 of course, they're not getting in as QAs then, right?

6 But when you look at the numbers -- the positive numbers,
7 the ones to the right, now you see really large gaps between
8 White and minorities here that shrink as you get to really
9 large values of the QA because now you're getting into crossing
10 the high threshold; so really large gaps in that window between
11 the initial QA cutoff and the final one.

12 Q. Let's go to the next slide.

13 We talked a bit ago about NAPS. Did you estimate a logit
14 model of NAPS admissions?

15 A. I did.

16 Q. What sample set did you use for that analysis?

17 A. So I used the same sample restrictions for NAPS that I
18 outlined at the beginning. So you have to pass the medical and
19 physical exams, et cetera. There's another restriction that we
20 put in here too.

21 We found out that future blue-chip athletes really matter
22 here. And you get the future blue-chip athletes because
23 basically everybody who goes to NAPS ends up applying to USNA,
24 and then they enter as blue-chip athletes the following year.
25 So they're going to be red-shirting football players, for

1 example.

2 So we take those out of the sample too for the purposes of
3 our estimation. And the reason we do that is I don't want to
4 confuse a preference for race with a preference for athletics,
5 right? We if don't use the variable, that's going to get
6 jumbled in there.

7 **Q.** Let's go to the next slide.

8 So these are the outputs of your logit model of NAPS
9 admissions?

10 **A.** They are.

11 **Q.** Do you have a preferred model within this set?

12 **A.** Model 5. That's the one that allows the effects of race
13 to vary. And you can see -- the way to interpret the ones --
14 the Asian times class greater than or equal to 2025 -- is you
15 need to add that coefficient to the Asian coefficient up above
16 to get the total effect in that year.

17 What you basically see is the preferences are remarkably
18 stable across models until you get to Model 5. And that's, of
19 course, because we've allowed for different effects for race in
20 that model.

21 **Q.** So just to be clear, since the -- since there's that
22 relative term in the class -- in Model 5, that means, for
23 example, that the coefficient on Asian in Model 5 is the one in
24 the Asian row plus the one in the Asian times class of 2025
25 row?

1 A. That's correct.

2 Q. Let's go to the next slide.

3 You previously discussed various kinds of analysis that you
4 did to quantify the effect of racial preferences.

5 Did you use those to determine the same kind of effect at
6 NAPS?

7 A. I did. And I'm just going to summarize them all on one
8 slide for the issues of time and just look at the effects for
9 the Black coefficient.

10 So first we're going to do the transformational analysis.
11 We take a White applicant with a 25 percent chance of
12 admission. In the early period if they were treated as Black,
13 that would be a 78.8 percent chance of admission. In a later
14 period, it translated to a 93 percent chance of admission.

15 We could do the same thing and calculate the average
16 marginal effects. And there you can see that the average
17 marginal effect for Black is 24.1 percent in the earlier period
18 and 52.3 percent in the later period.

19 For the admitted minority analysis, the admit rates
20 without racial preferences for previous Black admits would be
21 23.6 percent in the earlier period and 24.5 percent in the
22 later period.

23 And then the final thing, of course, if you turn off the
24 racial preferences at NAPS, that's going to make it easier for
25 everybody to get in. That's what the capacity constraints

1 analysis does. And here you can see that we end up with 61
2 less Black admits in the early period, 67 less Black admits in
3 the later period, for a total of 128 less Black admits.

4 For White applicants -- White admits, they're going to go
5 up by 183 in total.

6 Q. Are you aware that Dr. Gurrea criticizes a number of
7 aspects of your analysis?

8 A. I am.

9 Q. Let's go through them.

10 Are you aware that Dr. Gurrea criticizes you for using a
11 logit model to model Naval Academy admissions?

12 A. I am.

13 Q. Is this criticism based on the notion that admissions
14 decisions are interdependent at the Academy because they make
15 decisions in a complex process on a rolling basis over time?

16 A. Yes.

17 Q. And does this criticism rest on Dr. Gurrea's reading of a
18 particular textbook?

19 A. It does.

20 Q. Are you familiar with the book "Discrete Choice Methods
21 with Simulation" by Kenneth Train?

22 A. I am.

23 Q. Okay.

24 Mr. Pusterla, can you put up Number 23.

25 Do you recognize the three block quotes here?

1 A. I do.

2 Q. Are they all from this textbook by Kenneth Train?

3 A. They are. And the first two sort of -- are really preview
4 quotes because they're forecasting what Ken Train is going to
5 talk about later.

6 So, really, the meat of the argument comes from the one --
7 the last one. And that criticism is, you know, that the
8 assumption of independent errors over time is severe.

9 "Usually one would expect there to be some factors that
10 are not observed by the researcher that affects each of the
11 decision-maker's choices. In particular, if there are dynamics
12 in the observed factors, then the researcher might expect there
13 to be dynamics in the unobserved factors as well."

14 That's the quote from Train's book.

15 Q. And let me ask you, how is it that you're familiar with
16 Professor Ken Train's book?

17 A. I use it in my class, the dynamic discrete choice class.
18 And, actually, the first few chapters of which these quotes are
19 included is day one of that class.

20 Q. So I take it you're familiar with this point?

21 A. I am.

22 Q. What is the point that Professor Train is making in that
23 passage?

24 A. Well, the issue is this quote is taken out of context.
25 The issue that Ken Train is writing about is one where you see

1 the same person making decisions over time and the decisions
2 today enter into the model and affect the next decision.

3 So as an example, you might look at somebody's alcohol
4 consumption and say, well, did they consume alcohol today? You
5 might be interested in is that partly because they consumed
6 alcohol yesterday? But we need to know whether that's because
7 they actually consumed alcohol yesterday or the errors, the
8 unobservables are correlated over time.

9 If they're correlated over time and you treat them as
10 independent, you're going to have a problem because you're
11 going to think that it had to do with this lagged dependent
12 variable, the consumption of alcohol in the previous period,
13 when it was really an unobserved preference.

14 But in my models I don't have a lagged dependent variable;
15 so there's not an issue here.

16 Q. And so you said that this quote here is taken out of
17 context. Is there a context in that same chapter that explains
18 your point about the lagged dependent variable?

19 A. Exactly. And the paragraph right before the one in Ken
20 Train's book makes it very clear that it's about lagged
21 dependent variables.

22 Q. And you said you cover this on the first day of class?

23 A. Yes.

24 Q. Have you estimated logit models of admissions processes
25 previously?

1 A. I have.

2 Q. And do you know others that have done that?

3 A. Yes. David Carr did in the *Harvard* case, in addition to
4 many other researchers.

5 Q. So in your view, is a logit model up to the task of
6 modeling Naval Academy's admissions process?

7 A. It is.

8 Q. Let's go to the next one.

9 Are you aware that Dr. Gurree criticizes your sample
10 selection criteria?

11 A. I am.

12 Q. And what does he say there?

13 A. Well, the big criticism comes from my decision to include
14 fleet applicants. There's a variable in the data that allows
15 you to take those out. And so we can see whether that actually
16 affects the results.

17 Q. What is Dr. Gurree's rationale for excluding the fleet
18 applicants?

19 A. Well, that is that they're treated differently in the
20 admissions process than other applicants just from recruiting
21 standpoints and such.

22 Q. What is your response to this criticism?

23 A. I believe my model captures those applicants well. I've
24 got a series of controls for your different backgrounds and
25 such. But we could actually see whether it makes any

1 difference by taking those guys out of the model and seeing
2 what happens to the coefficients.

3 Q. So what does that slide illustrate?

4 A. So in the first column, it's estimating on my preferred
5 sample, what I actually did in my rebuttal report, the PSA
6 preferred model. Those are the coefficients we already talked
7 about.

8 In the second column, I now do what Dr. Gurrea asked for
9 by taking out those fleet applicants. So you can see the
10 sample size changes just a bit.

11 And then what you can see is that, actually, the
12 coefficients on race all increase. So, actually, my estimates
13 in my preferred model were conservative relative to one where
14 we took out fleet applicants. But the amount they move is not
15 very much.

16 Q. Let's go to the next slide.

17 What does this table display?

18 A. So we've added the coefficients. Now we're going to do
19 the average marginal effects. We're going to do it for the
20 data that I used in my preferred model and then taking my
21 preferred model and applying it with the additional restriction
22 of using Gurrea's sample.

23 Q. And what does that show?

24 A. The average marginal effects are larger in the Gurrea
25 sample than they are in -- when I just estimated it on my

1 initial sample.

2 Q. So is Dr. Gurrea's criticism of your sample selection a
3 valid criticism?

4 A. I don't think it makes that big of a difference, and it's
5 clear that incorporating it actually leads to higher estimates
6 of racial preferences.

7 Q. Let's go on to the third one. Omitted variable bias.

8 Are you aware that Dr. Gurrea contends that your model
9 suffers from omitted variable bias because it fails to account
10 for the impact of a candidate belonging to an underrepresented
11 district?

12 A. I am.

13 Q. What is your response?

14 A. So I don't have a control for underrepresented district in
15 the data, but I capture those things well through having
16 characteristics of the district that they're applying from.

17 So we're going to say, how many people were dominated on
18 that slate in that particular year? If it's an
19 underrepresented district, you would expect them to have fewer
20 nominees or at least fewer qualified nominees. And, similarly,
21 if it's an underrepresented district, they need to get people
22 that have a WPM score that's sufficiently high. The average
23 WPM score on those slates, all that stuff is in my model.

24 Q. Are you aware that Dr. Gurrea criticizes your model for
25 not including the components of the RAB as well as variables

1 for hardship, adversity, and life experiences?

2 A. I am.

3 Q. What is your response, starting with the RAB?

4 A. Well, first of all, you know, these are my logit estimates
5 here. And I did estimate models with RAB, and it had virtually
6 no impact on those racial coefficients. This is treating the
7 effects of all RABs the same. But, nonetheless, all those are
8 in here.

9 Q. Did you further analyze this issue?

10 A. I did.

11 Q. Can we go to Number 55.

12 And what does this table show?

13 A. So this basically adds some columns to the ones we were
14 already discussing. So the first column is my preferred
15 estimates. You've already seen those a few times now.

16 Now we do the preferred -- my preferred model but with the
17 Gurrea sample. We've just showed that. They went up. Now I'm
18 going to add those variables you wanted me to include -- the
19 hardship, the adversity, and the life experience variables in
20 Column 3.

21 And what you can see is the adversity measure and life
22 experience measure actually don't have any effect. You do see
23 an effect for hardship funding, but it doesn't affect the
24 racial coefficients except, I think, in the third decimal
25 place.

1 Q. Which is to say not much?

2 A. Exactly.

3 Q. And then what about when you add in the RAB points?

4 A. You add in the RAB points. Now, it really depends on
5 which racial coefficient we're talking about. The one for
6 Black increases; the ones for Hispanic and Asian slightly
7 decrease.

8 Q. So if you followed Dr. Gurree's advice, it would show
9 larger racial preferences?

10 A. It would be a mix. For Black applicants, yes, and for
11 Hispanic and Asians, slightly lower, but basically unchanged.

12 Q. Is Dr. Gurree's claim of omitted variable bias in your
13 models valid?

14 A. I don't believe so.

15 Q. Are you aware that Dr. Gurree claims that your
16 categorization of race and ethnicity is arbitrary?

17 A. I am.

18 Q. How does he categorize race?

19 A. So what Dr. Gurree is going to do is keep ethnicity
20 separate from race. So that means you could be Hispanic and
21 Black and we're going to count you as both Hispanic and Black.
22 So it would be variables for ethnicity and variables for race.

23 And then if you're Black and Asian American, you're not
24 going to be counted as Black or Asian American; you'll be
25 counted as multiracial. Or Black and White, you'll be counted

1 as multiracial.

2 That's just a different way of categorizing it. And then
3 we could see what difference it makes.

4 Q. What did you just put on this slide?

5 A. So what I'm showing here is taking my preferred model, my
6 sample in the first set of rows -- first panel, but now
7 changing how I categorize race. So I'm using his racial
8 categorization.

9 You know, you can see that the titles are different. So
10 before, I had Black, Asian American, and Hispanic; here we have
11 Black, Asian American, and multiracial.

12 And then you can see what would happen to those average
13 marginal effects of race. And, yes, it's smaller for Black,
14 but it's nonetheless very large at almost 19 percentage points.
15 If you're really turning on both preferences for race and
16 ethnicity, you turn off Hispanic and Black, that would raise
17 the Black thing to 19.6 percent because you can be Black and
18 Hispanic.

19 The second panel says, okay, let's throw out the fleet.
20 What do you get? You get even bigger effects.

21 Q. Did you analyze the admit rates that you would get across
22 these racial categorizations?

23 A. I did, yes.

24 And so the question is what way is the better way to
25 categorize on the basis of race? At face value, what

1 Dr. Gurree proposes is completely reasonable, just a different
2 way of categorizing things.

3 But how does it actually match up with what's revealed by
4 USNA admissions decisions? That's what this table shows.

5 Where things are going to be different is for these
6 multiracial group. So if we think about a multiracial Black
7 applicants, what is their admit rate? Well, their actual admit
8 rate is -- well, yeah, we can use the Gurree sample. So that
9 would be the 48.7 percent for multiracial Blacks.

10 My model predicts an admit rate for that group of
11 45.4 percent. So we're pretty close. So that's just one
12 column over.

13 But Dr. Gurree's categorization really misses on the group
14 that matters for this racial categorization. The admit rate
15 predicted right there is 30.6 percent. And it's missing the
16 fact that, if you're multiracial and Black, you're going to get
17 the Black bump. You're going to get the big preference, not
18 the smaller preference.

19 So you can see throughout, my model does a better job of
20 predicting the admit rates for these mixed categories. And so
21 that's why I prefer my racial categorization.

22 You can look over all and say, well, how well does my
23 model fit versus Dr. Gurree's? And he acknowledges that my
24 model fits better, but he says it's just a little bit better.

25 Well, the reason it only fits "a little bit better" is

1 because that model fit is measured on all the applicants, or at
2 least all the non-blue-chip athlete, nonprep, all the
3 applicants. And our racial categorizations overlap for the
4 vast majority of applicants.

5 Q. Let's go on to the next one.

6 Dr. Gurrea criticizes your view on the selection of
7 observables versus unobservables, correct?

8 A. Correct.

9 Q. You mentioned that before about how observables behave
10 versus unobserveables.

11 What is the nature of Professor Gurrea's criticism?

12 A. So what you're always worried about is what is left in the
13 unobservable? And you could see that with my models. It has
14 added controls. The coefficients on race were changing. If
15 I've left out some variable that happens to be related more to
16 Blacks than to other applicants, then maybe I'm overestimating
17 racial preferences.

18 But what you'll notice is that, across the board when
19 you're looking for Black applicants, the coefficients on races
20 is going up. So as you're adding more and more observables,
21 White applicants are actually stronger on the observables. And
22 you can see that generally for the other races as well, with
23 the exception of when you put in the RAB, which I think has a
24 hint of racial preferences in it, but the general pattern
25 holds.

1 Q. Go the Slide 58.

2 What do you display in this slide?

3 A. Well, this sort of shows the strength of the different
4 groups on those observables. So I take those admissions index,
5 take out the racial part, and say, okay, the weights that are
6 revealed in my logit model, you know, how much they value each
7 component of the WPM, how much they value the CFA score, we can
8 combine those all to say this is an index that relates to
9 admissions weighting appropriately.

10 And then I'm going to split that up into 10 deciles again,
11 with Decile 10 being the top 10 percent according to that. And
12 what you can see is, as you go down, Whites start off with a
13 bigger share at the top, and then it goes smaller as you go
14 down.

15 For Black applicants, you see generally it's going up as
16 you move down. So there's only 1.5 percent of Black applicants
17 in that top decile and 30.7 percent in the bottom decile.

18 So there's a whole literature relating this concept of
19 selection on observables versus unobserveables. And so what
20 people -- I'm making the assumption that the unobserved
21 variable that I have left is independent of race.

22 There's a debate in the economics literature about how
23 much you should correct for that. And the way you correct for
24 it is either you do what I've done, which would say it's
25 uncorrelated, or you say you know what? Those guys that are

1 stronger on the observed measure, they're probably stronger on
2 the unobserved measures. And that means I'd be underestimating
3 my racial preferences with what I've been showing you.

4 That's what this literature is about. And the paper that
5 Dr. Gurreea and I both cite is actually written by one of my
6 coauthors on this.

7 Q. Do you consider Dr. Gurreea's criticism of your view of
8 observables and unobservable to be a valid criticism?

9 A. I don't. And this also shows up in my peer-reviewed work
10 as well. It's right in the abstract of my paper on Asian
11 American discrimination.

12 Q. Let's go to the last one.

13 Are you aware that Dr. Gurreea claims that a model with no
14 controls for race has little effect on model accuracy and thus
15 suggests that race is not having much of an effect at all?

16 A. I am.

17 Q. First of all, what does he mean by "a model with no race
18 controls"?

19 A. So that's where you estimate the logit model but don't
20 include race. And what that's going to mean is the model still
21 has to try to explain these racial admissions decisions. So
22 it's going to change the weights on those coefficients to try
23 to do so.

24 Q. So what is your response to Dr. Gurreea?

25 A. Well, the issue here is -- corresponds to what I was

1 talking about before in that we've got the whole pool. It's
2 not going to affect the accuracy as much for White applicants
3 in that regard.

4 It's sort of like if you had a basketball team. You could
5 have preferences for a basketball team that are enormous,
6 right? And if you turned off those preferences for the
7 basketball team and asked how well the model predicted for the
8 whole class, you would find very little difference in the
9 accuracy. No surprise.

10 Q. Because it's such a small set?

11 A. Because it's such a small set.

12 But if you actually look at the group that's affected by
13 this, which would be the minorities, and you'll see that you're
14 going to be way off in terms of your accuracy for them.

15 Q. Let's look at the next slide.

16 What does this display?

17 A. We need to go one more.

18 Q. Sorry.

19 A. One more.

20 So this is looking for my sample versus Gurrea's sample.
21 So it's going to be based on my preferred model. Going on my
22 preferred model, the actual admit rate for Black applicants is
23 37.3 percent. If you estimated that model without controls for
24 race, got those coefficients, and said, okay, well, what would
25 the model say your admit rate would be, it would be a little

1 over 15 percent.

2 So it wildly misses the actual admit rate. That -- saying
3 that the accuracy is not very much affected by not controlling
4 for race is not true when you look at the beneficiaries of
5 racial preferences. There, you can see it makes a huge
6 difference.

7 Q. In other words, it poorly predicts for the people he's
8 talking about?

9 MR. GARDNER: Objection, Your Honor. Leading. I've
10 been very generous.

11 THE COURT: Yeah, it is leading, but it's fine. It's
12 fine.

13 Just don't testify, Mr. McCarthy. Let the witness.

14 MR. MCCARTHY: I won't do it. Thank you.

15 BY MR. MCCARTHY:

16 Q. Is Dr. Gurree's model with no controls for race a valid
17 way to illustrate the effects of race?

18 A. No. You need to be controlling for race in order to find
19 that out because they're going to be weighting those
20 characteristics when you take the race out.

21 MR. MCCARTHY: No further questions.

22 THE COURT: Thank you, Mr. McCarthy.

23 We have -- Mr. Carmichael? I'm sorry. Who is to your
24 right there? I'm sorry.

25 MR. GARDNER: It's me, Your Honor.

1 **THE COURT:** Okay. I wasn't sure. You're
2 cross-examining?

3 **MR. GARDNER:** Yes, Your Honor.

4 **THE COURT:** All right. We can just get started. We
5 have another 25 minutes. We'll get started. Thank you,
6 Mr. Gardner.

7 I'm sorry, Mr. Carmichael. I didn't mean to scare you.

8 **MR. GARDNER:** Can I have two minutes to set up.
9 (Laughter.)

10 **THE COURT:** We're laughing here. That's a law school
11 exercise. You ask someone -- you give him two minutes' notice
12 and say, "Here, you take the other notes," and you go. It's
13 a -- you know.

14 **CROSS-EXAMINATION**

15 **BY MR. GARDNER:**

16 **Q.** Good afternoon.

17 **A.** Good afternoon.

18 **Q.** Nothing I want more to do than talk about economics at
19 4:30 on a Wednesday, but I do appreciate your time, and it is
20 nice to see you again.

21 You've been retained by Students for Fair Admissions in
22 this case, correct?

23 **A.** Correct.

24 **Q.** You understand that Students for Fair Admissions'
25 described mission is to end the use of race in college

1 admissions, correct?

2 A. I suppose that could be correct, yes.

3 Q. This is not the first case, obviously, where you've been
4 retained by Students for Fair Admissions, correct?

5 A. Correct.

6 Q. You were retained by Students for Fair Admissions in the
7 *Harvard* case?

8 A. Correct.

9 Q. You were retained by Students for Fair Admissions in the
10 *University of North Carolina* case?

11 A. Correct.

12 Q. And both of those cases involved college admissions'
13 consideration of race, correct?

14 A. Correct.

15 Q. Now, in the *Harvard* case you contended, and SFFA
16 contended, that Harvard considered race improperly, correct?

17 A. I don't think I contended they considered race improperly;
18 I think I just estimated how much race mattered to their
19 admissions process.

20 Q. You recall that you testified in the *Harvard* case,
21 correct?

22 A. Yes.

23 Q. And you took the same oath that you took here, right?

24 A. Yes.

25 Q. And you swore to tell the truth there, right?

1 A. Yes.

2 Q. And you did tell the truth there, right?

3 A. Yes.

4 Q. I wanted to show you your deposition in that case.

5 Now, Professor, what I've handed you is a binder full of
6 transcripts because you've testified many times. And what I'd
7 like to do is draw your attention to the second transcript. It
8 is *Harvard* transcript day nine. It's the second transcript in
9 your binder. We'll put it up on the screen.

10 A. I think it's the third transcript, right?

11 Q. What's that?

12 A. Isn't it the third one?

13 Q. It should be the second one. It should be day two.

14 A. So I've got it listed. 1 is deposition transcript; 2, *UNC*
15 trial transcript; 3, *Harvard* transcript day nine.

16 Q. Hold on. My order is somehow different.

17 Now, I want to turn your attention to page 160.

18 And, Errol, are we getting that up on the screen.

19 Now, are you on page 160, sir?

20 A. Yes.

21 Q. And you were asked the following question beginning at
22 line 16:

23 "Q. Now, to be clear, in this case, as you told us, you
24 contend, and SFFA contends, that Harvard considers race
25 improperly, correct?

1 "A. Correct."

2 A. Yeah, I must have said that.

3 Q. And in the *UNC* case, the North Carolina case, you
4 contended, and Students for Fair Admissions contended, that the
5 University of North Carolina considered race improperly,
6 correct?

7 A. It looks like that's what I said here.

8 Q. And you were telling the truth then, right?

9 A. Yeah, I mean, I think --

10 Q. All right.

11 A. I'm telling the truth to the best of my ability.

12 Q. To the best of your ability?

13 A. Yes. I mean --

14 Q. Okay. We'll move on.

15 So in *Harvard*, the *University of North Carolina*, and this
16 case, you prepared statistical models, correct?

17 A. Correct.

18 Q. And in *Harvard*, *UNC*, and this case, you provided opinions
19 to support your basic conclusions, correct?

20 A. That's correct.

21 Q. Your opinions in the *University of North Carolina* case and
22 the *Harvard* case were not ultimately accepted by the trial
23 court in both of those cases, correct?

24 A. That's correct.

25 Q. Now, you've received funding from something called the

1 Searle Freedom Trust, correct?

2 A. Correct.

3 Q. The Searle Freedom Trust funded some of the affirmative
4 action work you've done throughout your career, correct?

5 A. It funded two papers, yes.

6 Q. You've received somewhere in the neighborhood of \$50,000
7 from the Searle Freedom Trust, correct?

8 A. That's correct.

9 Q. You know that the Searle Freedom Trust --

10 THE COURT: What is the first name you're saying? I'm
11 sorry.

12 MR. GARDNER: It's Searle, S-E-A-R-L-E.

13 THE COURT: Thank you.

14 BY MR. GARDNER:

15 Q. Professor, you know that the Searle Freedom Trust is
16 actually a funder of Students for Fair Admissions, correct?

17 A. That sounds right.

18 Q. That is right, correct?

19 A. Okay.

20 Q. Yes?

21 A. I'm trying to recall, but --

22 Q. I can try to refresh your recollection, then. Look at the
23 same transcript.

24 A. Okay.

25 Q. I would like you to look at page 160.

1 A. I'm already there.

2 Q. There you are.

3 And if you look at line 7:

4 "Q. You know that the Searle Freedom Trust is actually a
5 funder of Students for Fair Admissions, don't you?

6 "A. I've learned that."

7 A. Okay. Yes.

8 Q. So you understand that Searle Freedom Trust is also a
9 funder of the plaintiff in this case, correct?

10 A. Correct.

11 Q. Now, prior to this lawsuit, you had never studied the
12 admissions practices of service academies, correct?

13 A. Correct.

14 Q. And other than a passing knowledge of how the admissions
15 process works because of one of your son's classmates, you had
16 no familiarity with the admissions process at the service
17 academies before this lawsuit, correct?

18 A. That's correct.

19 Q. Now, in reaching your opinions in this case, you didn't
20 talk to anyone working at the Naval Academy's admissions
21 office, correct?

22 A. Correct.

23 Q. And in reaching your opinions in this case, you haven't
24 spoken to any current or former Naval Academy applicants,
25 correct?

1 A. Oh, correct.

2 Q. In reaching your opinions in this case, you have not
3 spoken to any current or former members of Students for Fair
4 Admissions, the plaintiff, correct?

5 A. Correct.

6 Q. Now, you can't name any student members of Students for
7 Fair Admissions, correct?

8 A. Correct.

9 Q. And you can't name any member of Students for Fair
10 Admissions who applied to the Naval Academy and wasn't
11 accepted, correct?

12 A. Correct.

13 Q. Now, you're aware that in this case Students for Fair
14 Admissions claims that the Naval Academy intentionally
15 discriminates in its admissions process, correct?

16 A. Correct.

17 Q. In offering opinions about the outcomes of admissions
18 decisions, you're not offering any opinions about the
19 motivations of the Naval Academy in making those admissions
20 decisions, correct?

21 A. Correct.

22 Q. Your model doesn't provide any information about intent
23 one way or the other?

24 A. Correct.

25 Q. Your opinions are agnostic as to intent, correct?

1 A. Correct.

2 Q. You're looking at outcomes?

3 A. Correct.

4 Q. You're not offering any opinion in this case that the
5 Naval Academy engages in racial balancing, correct?

6 A. Correct.

7 Q. And you're not offering any opinion about the military's
8 interest in having a racially diverse officer corps, correct?

9 A. Correct.

10 Q. With respect to the Naval Academy's admissions process,
11 you're not offering any opinion about how the Naval Academy
12 should evaluate the quality of applicants for admission,
13 correct?

14 A. Correct.

15 Q. And you're not second-guessing the Naval Academy's
16 judgment that it's admitting qualified students, correct?

17 A. Correct.

18 Q. Now, if we could turn to slide -- I guess it's 3.2, which
19 describes your methodology.

20 Errol, if we could pull that up.

21 THE CLERK: Counsel, which exhibit number is this?

22 MR. GARDNER: So it's his demonstratives. I was
23 calling it PD3.2.

24 THE COURT: It was exhibit number --

25 THE CLERK: PD3, Your Honor.

1 **MR. GARDNER:** PD3.2.

2 **BY MR. GARDNER:**

3 **Q.** And this is the slide that describes, essentially, your
4 methodology, correct?

5 **A.** Correct. I prefaced with a step zero, yes.

6 **Q.** And that's exactly what I was going to get at.

7 So as you mentioned, your step zero in your model is to
8 understand the admissions process, correct?

9 **A.** Correct.

10 **Q.** And then the next step is, as you say here, to create the
11 dataset for analysis, right?

12 **A.** Correct.

13 **Q.** And then the third step is a descriptive analysis to look
14 for basic patterns in the data, correct?

15 **A.** Correct.

16 **Q.** And then you have a statistical analysis, which is your
17 regression analysis, right?

18 **A.** Correct.

19 **Q.** And then you actually examined auxiliary evidence as well,
20 correct?

21 **A.** Correct.

22 **Q.** All right. And in terms of your regression analysis, as
23 you mentioned earlier, you're using a logit model, correct?

24 **A.** For admissions, yes, correct.

25 **Q.** For admissions. And if we look at PD3.22, this is where

1 you describe your logit model, correct?

2 A. Correct.

3 Q. Now, your goal in developing a logit model in this case
4 was to model the Naval Academy's actual admissions process as
5 best you could, correct?

6 A. Correct. To approximate that process as best I can.

7 Q. That's right. Your model was designed to approximate the
8 Naval Academy's admissions process as closely as possible,
9 correct?

10 A. So -- yes, a qualified yes.

11 So, you know, I can just give an example where you don't
12 want to put in factors that are -- direct a function of
13 preferences. And that was a big debate in the *Harvard* case,
14 was the personal rating, for example. Personal rating clearly
15 matters for Harvard's admissions, but it's inappropriate to
16 control for it.

17 Q. Now, again, you and I met about a month ago, right?

18 A. Right.

19 Q. You were deposed in this case. You swore to tell the
20 truth, and you did tell the truth, correct?

21 A. To the best of my ability, yes.

22 Q. To the best of your ability.

23 Let's take a look at your deposition in this case, which
24 I'm hopeful is Tab Number 1 in that binder right now.

25 And now I'd like to draw your attention to page 137 of

1 your deposition transcript in this case.

2 And beginning at line 6, I asked you the following
3 question:

4 "Q. Putting aside the nomination channel, was your goal
5 with your logit model to model the Naval Academy's actual
6 admissions process as closely as possible?

7 "A. My model is designed to approximate Navy's admissions
8 process as closely as possible."

9 Now, the weights that your model is assigning are what you
10 call the coefficient, correct?

11 A. Correct.

12 Q. And when you refer to a Black preference, that means the
13 coefficient for Blacks would be positive, correct?

14 A. Correct.

15 Q. And when your model's race coefficient is positive, it's
16 just telling you that the Naval Academy values that
17 characteristic, correct?

18 A. Correct.

19 Q. And when the race coefficient is positive, it's not
20 telling you anything about the reasons why the Academy is
21 making particular admissions decisions other than that it
22 values that characteristic, correct?

23 A. Correct.

24 Q. And you agree that it is possible that a model's accuracy
25 in predicting an outcome does not indicate that that model

1 accurately measures the coefficient, correct?

2 A. That's always possible, correct.

3 Q. Given that step zero in your analysis is to understand the
4 admissions process from the Naval Academy, I want to ask you a
5 few questions about that process.

6 Now, first off, you agree the Naval Academy is a highly
7 selectively school, correct?

8 A. Correct.

9 Q. I think you heard Mr. Mortara say that during the opening.

10 Now, you agree that the Naval Academy's admissions process
11 has different goals than a civilian university, correct?

12 A. Correct.

13 Q. Let's take a look at the dean of admissions supplemental
14 guidance for 2028. And that's Plaintiff's Exhibit 27.

15 Now, Professor, this is a document that you considered and
16 relied upon in this case, correct?

17 A. Correct.

18 Q. And I'd like to look at Section 1.A1. And on this page,
19 it indicates that the Naval Academy's admissions board, their
20 function is to identify 1,170 candidates who are mentally and
21 physically able to participate in rigorous academic,
22 professional, and physical training programs, correct?

23 A. Correct.

24 Q. And you agree that the physical training part is a goal
25 that's unique to the service academies, correct?

1 A. Correct.

2 Q. Now, if we look at the next goal, it says, "The next
3 function of the admissions board is to identify candidates who
4 show high interest in serving their country as professional
5 officers in the naval service," correct?

6 A. Correct.

7 Q. And you agree that's not the goal of a civilian college or
8 university's admissions process, correct?

9 A. Correct.

10 Q. That's a goal that's unique to the service academies?

11 A. Correct.

12 Q. Now, the third goal of the admissions board is to identify
13 candidates who are likely, as a group, to choose fields of
14 study that reflect the needs of the naval service, correct?

15 A. Correct.

16 Q. That's a goal that's unique to military institutions like
17 the Naval Academy, correct?

18 A. Correct.

19 Q. And the next goal of the admissions board is to identify
20 candidates who show high potential for leadership, correct?

21 A. Correct.

22 Q. Now, you think that some universities like Harvard put a
23 premium on this goal as well, correct?

24 A. Correct.

25 Q. But you agree that leadership potential is an important

1 factor that the Naval Academy admissions board considers,
2 correct?

3 A. Correct.

4 Q. Now, another goal of the Naval Academy's admissions board
5 is to identify candidates who appear likely to complete the
6 four-year course and to remain in service beyond the period of
7 obligated service after commissions, correct?

8 A. Correct.

9 Q. And that's another goal that's unique to the service
10 academies, correct?

11 A. Correct.

12 Q. And the next goal of the admissions board is to identify
13 candidates who are of excellent moral character and
14 enthusiastically support the Naval service core values,
15 correct?

16 A. Correct.

17 Q. That's a goal that is certainly unique to the Naval
18 Academy, right?

19 A. Correct.

20 Q. You agree that the Naval Academy employs a holistic
21 admissions process. I think you said that on direct, correct?

22 A. Correct.

23 Q. In other words, the Naval Academy is looking at all
24 aspects of a candidate as reflected in that candidate's
25 admissions package?

1 A. Yes. Correct.

2 Q. And it's fair to say that you're somewhat skeptical of
3 holistic admissions processes, correct?

4 A. I am.

5 Q. You refer to holistic admissions processes as murky and
6 nontransparent, correct?

7 A. I believe that that's the case, or something very close to
8 that.

9 Q. And you believe the Naval Academy's admissions process is
10 both murky and nontransparent, correct?

11 A. It purports to be transparent; but then when you look at
12 the details of how it actually plays out, it becomes much
13 murkier.

14 Q. So you believe the Naval Academy's admissions processes is
15 murky and nontransparent, correct?

16 A. There's a difference between what they say versus how it
17 actually works.

18 Q. So you agree with me, then, that your view is that the
19 Naval Academy's admissions processes is murky and
20 nontransparent, correct?

21 A. Correct.

22 Q. All right. In fact, you believe that the Naval Academy is
23 not being forthcoming about the extent to which it uses race in
24 its admissions process, correct?

25 A. I do.

1 Q. And you agree that the process for applying to the Naval
2 Academy is different from a typical university in that the
3 applicant must be nominated for an admission, correct?

4 A. Correct.

5 Q. In other words, a nomination is a necessary condition to
6 be admitted to the Naval Academy, right?

7 A. Correct.

8 Q. And the more nominating sources a candidate has, the more
9 it increases the optionality of an applicant to be admitted to
10 the Naval Academy, correct?

11 A. All else equal, yes. Correct.

12 Q. You agree that the Naval Academy has no direct control
13 over who provides congressional nominations, correct?

14 A. No direct control, correct.

15 Q. And you're aware that congressional nominations make up
16 80 percent of all nominations, correct?

17 A. I'd have to look that number up, but --

18 Q. You have no reason to disagree with that, correct?

19 A. I don't have a reason to disagree with it.

20 Q. Now, while you acknowledge that the Naval Academy may be
21 able to request that a certain congressperson provide
22 nominations, you agree that, at the end of the day, it's up to
23 that congressional office to provide nominations, correct?

24 A. Correct.

25 Q. And you agree it's also up to the congressional office to

1 decide which nominating method to use, correct?

2 A. Correct.

3 Q. And outside of that encouragement from the Naval Academy,
4 the congressional nominations are a key factor of the
5 admissions process that is outside the control of the Naval
6 Academy, correct?

7 A. Correct.

8 Q. Now, in terms of your statistical modeling in this case,
9 the fact that the Naval Academy uses a nominations process
10 changes the factors that applicants are competing on, correct?

11 A. So I view it in the same way I would view dockets at
12 Harvard. You're on a slate competing against particular
13 people.

14 Q. So, for example -- maybe an example would be helpful.

15 If an applicant is ranked as a principal, that's going to
16 take things out of the Naval Academy's control to some degree
17 in terms of selecting that applicant for admissions, correct?

18 A. Oh, correct.

19 Q. Absolutely. And if the applicant is on a weaker slate but
20 is still qualified, then that candidate has a higher chance of
21 getting in than if that applicant were on a stronger slate,
22 correct?

23 A. Correct.

24 Q. Now, two other big differences between the Naval Academy's
25 admissions process and a civilian university is the physical

1 fitness and character requirements, correct?

2 A. Physical fitness and medical exam.

3 Q. The medical exam and the character assessment, correct?

4 A. Yeah. The character assessment operates through another
5 channel there, yeah.

6 Q. Right. And another difference in the Naval Academy's
7 admissions process is that there are different channels of
8 admission, qualified alternates and additional appointees that
9 you were discussing on direct, correct?

10 A. Correct.

11 Q. You agree that the Naval Academy has a relatively high
12 lack of completion rate for applications, correct?

13 A. Correct.

14 Q. And that's across all racial groups, right?

15 A. Correct.

16 Q. But it's particularly true or acute for African Americans,
17 correct?

18 A. African Americans with a nomination. It flips for those
19 without a nomination.

20 Q. Right. Now, your understanding is that congressional
21 slates are supposed to be decided primarily based on the
22 whole-person multiple, correct?

23 A. That was my understanding from reading a lot of
24 declarations.

25 Q. But now you have a slightly different understanding,

1 correct, because you now know that that's not true for
2 congressional slates that use the principal numbered alternate
3 method where the principal is qualified, correct?

4 A. Well, that was always my understanding, that the
5 principal -- we're talking about competitive congressional
6 slates. The WPM is supposed to dominate. I don't think that
7 it does dominate. It matters.

8 Q. Correct. But just to be clear, for congressional slates
9 that use the principal numbered alternate method where the
10 principal is qualified, then they're not making that decision
11 based on the whole-person multiple, correct?

12 A. That's correct.

13 Q. In those circumstances where the congressperson uses the
14 principal competitive alternate method and the candidate is
15 deemed qualified and accepts a nomination, you agree the
16 whole-person multiple is not considered for that candidate
17 either, correct?

18 A. That's correct.

19 Q. And you understand that approximately 35 percent of
20 congresspeople use either the principal numbered alternate or
21 principal competitive alternate method, correct?

22 A. Yes.

23 MR. GARDNER: Your Honor, I'm about to change topics.
24 It's 4:56.

25 THE COURT: All right. This is a good point to stop.

1 Thank you, Mr. Gardner.

2 Professor Arcidiacono -- did I pronounce your name
3 correctly?

4 THE WITNESS: Close enough.

5 THE COURT: How do you pronounce your last name?

6 THE WITNESS: Arcidiacono.

7 THE COURT: I'm sorry.

8 THE WITNESS: Arcidiacono.

9 THE COURT: Arcidiacono. I'm sorry.

10 You should not discuss your testimony with anyone until
11 you come back to the witness stand tomorrow.

12 And we'll start promptly again at 10:00 tomorrow. And
13 there is a *pro hac vice* admission Mr. Mortara made on your
14 legal team, which is perfectly fine. We've started the
15 process. I think -- I forget who it is. But we've gotten a
16 *pro hac vice* petition. That's fine, and we processed it during
17 the break.

18 MR. MORTARA: Thank you, Your Honor. We very much
19 appreciate it.

20 THE COURT: No problem.

21 MR. GARDNER: Your Honor, I do have one housekeeping
22 matter to raise, but --

23 THE COURT: Sure.

24 Professor, why don't you leave. You can go. That's fine.
25 We'll see you tomorrow at 10:00. Thank you very much. I'm

1 sorry I butchered your name. I apologize.

2 **MR. GARDNER:** I've been apologizing too.

3 **THE COURT:** That's quite all right.

4 Yes, Mr. Gardner?

5 **MR. GARDNER:** So, Your Honor, I could use a little bit
6 of guidance from you because I want to make sure we're all on
7 the same page.

8 **THE COURT:** Okay.

9 **MR. GARDNER:** Plaintiff introduced three expert
10 reports from the professor.

11 **THE COURT:** Right.

12 **MR. GARDNER:** They covered only two of those reports
13 during the oral examination. The second report, Plaintiff's
14 Exhibit 222 --

15 **THE COURT:** Hold on a second. Wait a minute. Just
16 give me a minute here.

17 Yes. There were Exhibits 218, 222, and 518, I believe, if
18 I'm not mistaken.

19 Is that right, Mr. McCarthy? Plaintiff's Exhibits 218,
20 2 -- or maybe it was just 22 -- I'm not sure -- and then 518
21 were the three that were introduced.

22 **MR. GARDNER:** That's right. So here's my question --

23 **THE COURT:** First of all -- I'm sorry -- do I have the
24 exhibit numbers correct? I'm looking at my notes.

25 **MR. MCCARTHY:** Yes. It's 218, 222, and 518.

1 **THE COURT:** All right. 222 and 518 -- okay -- were
2 known or at least were marked, and then there were questions as
3 to -- you're saying two of the three of those?

4 **MR. GARDNER:** Correct, Your Honor.

5 **THE COURT:** Right.

6 **MR. GARDNER:** So Plaintiff's Exhibit 222, which is the
7 rebuttal report, is a critique of other government experts, not
8 Dr. Gurrea, almost exclusively Dr. Lyall.

9 It does correct some of the numbers in the original expert
10 report, but here's my question for the Court:

11 I have a number of questions for the witness about his
12 critiques of Dr. Lyall. They now seem to be in the record.
13 But if plaintiff is not going to rely upon any of those
14 statements for posttrial findings of fact, I will not ask this
15 witness any questions that he did not get into on the stand.

16 But I guess I need some clarification.

17 **THE COURT:** Sure.

18 Mr. McCarthy, go ahead.

19 **MR. MCCARTHY:** Thank you, Your Honor.

20 Two things. One, I think this is just a reiteration of
21 the same issue you've already resolved before. I think you
22 said previously that counsel could ask the experts about any
23 issue they wanted.

24 **THE COURT:** Yeah, I think it did come up that there
25 was -- I think it came up with Mr. Robinson, if I'm not

1 mistaken, in terms of the extent to which there's information
2 in there that was not discussed and there was no topic of
3 cross-examination. There are hearsay implications which I will
4 just ignore. And to the extent that they're a summary of
5 witnesses there that did not testify, then they really won't be
6 considered by me in findings of fact or conclusions of law.
7 That's all.

8 So you don't need to go into matters about which he's not
9 testified. It doesn't affect the admissibility of the document
10 because, as I've said several times -- we've been down this
11 road before -- in terms of a bench trial, in terms of trying to
12 go through each report and redact certain double-hearsay under,
13 I think, 805, it's a laborious task. We don't need to engage
14 in it.

15 **MR. GARDNER:** That's fine. I'm trying to be efficient
16 with my time.

17 **THE COURT:** Mr. Mortara, you can address the Court as
18 well on this. I mean, I think we went down this road, and you
19 agree with my analysis that the law clearly states that, to the
20 extent that there are expert reports, you don't need the
21 same -- generally, expert reports may or may not be admissible
22 if they're not referenced. But during a bench trial, it's a
23 much more workable model just to have the reports come in
24 and --

25 Mr. Mortara, do you have anything else you want to add on

1 before I hear Mr. Gardner?

2 **MR. MORTARA:** Sorry, Your Honor. We're 100 percent
3 fine if Mr. Gardner wants to cross Dr. Arcidiacono about any of
4 the opinions he didn't express. And we will do the same thing
5 to their experts.

6 **THE COURT:** Or if he did not express it -- here's the
7 question: If he did not express it, then he's not going to
8 cross-examine on it and is it going to be considered by me?

9 **MR. GARDNER:** That's exactly the question.

10 **THE COURT:** And the answer is no. Simple. I mean,
11 we're getting daily copy as well as all of you. And to that,
12 Ms. Thomas deserves a medal already. And she's doing a great
13 job with this.

14 So my point is no. To the extent that there's something
15 in a report and it's not discussed by the expert and there's no
16 cross by it by the opponent, I'm just not going to consider it.
17 I'll just note that it's there, but I won't consider it anyway.

18 I'm perfectly capable of dealing with that rather than us
19 taking a lot of time just seriatim. And I don't know, but I
20 suspect my colleague in Massachusetts and North Carolina
21 probably took the same approach. I don't know, but I would
22 assume they did. That's really the way it's done. And so
23 that's the way I've always done it, and that's the way I'll do
24 it as well.

25 **MR. GARDNER:** Thank you for the guidance, Your Honor.

1 It's very helpful. It should make it shorter tomorrow.

2 **THE COURT:** That's fine.

3 **MR. MORTARA:** To be clear, Your Honor, we are
4 permitted to cross-examine an expert about something that
5 appears in their report that they do not testify about on
6 direct?

7 **THE COURT:** Absolutely. Absolutely. If it's there,
8 you can absolutely -- either side can absolutely bring it out,
9 cross-examine it. And it's fair game. And then I will
10 certainly consider what the opinion was and what the
11 cross-examination was on it or vice versa. That's fine.
12 That's fine.

13 **MR. MORTARA:** Thank you.

14 **THE COURT:** All right.

15 Okay. With that, we're right on schedule.

16 And by the way, how are we doing in terms of scheduling
17 here? We've got tomorrow, Friday, Monday, Tuesday, Wednesday,
18 Thursday of next week. The only glitch is Friday morning, the
19 27th, I think it may be a problem up until, like, around 11:30,
20 quarter to 12:00 because I need to be at some of the interviews
21 of potential applicants for the magistrate judge position here
22 that's now open with the confirmation of Judge Abelson.

23 But we'll definitely go from noon until 5:00 and take
24 maybe a 2:00 or 2:15 break. I'd urge -- we'll tell you later,
25 but I would urge everyone to have an early lunch or a late

1 breakfast or something.

2 And then, if necessary, if we drift to the following week,
3 we drift to the following week. I want everyone to take as
4 much time as possible.

5 Are we pretty much on track from your point of view,
6 Mr. Mortara?

7 **MR. MORTARA:** Mr. Gardner and I have been in great
8 communication, although sometimes energetic --

9 **THE COURT:** Okay.

10 **MR. MORTARA:** -- and we think we're in good shape.

11 **THE COURT:** Okay. That's fine.

12 **MR. MORTARA:** There's issues with the government's
13 witnesses. Some of them are very high-ranking; so availability
14 is an issue. I sent Ms. Hudson an email and then a corrected
15 email regarding the witness order. We think we are all okay
16 through Friday.

17 **THE COURT:** Okay. That's fine. Next Friday, you're
18 saying? Next Friday?

19 **MR. MORTARA:** No, we're okay through this Friday.

20 **THE COURT:** This Friday, and we'll figure out next
21 week. Okay.

22 **MR. MORTARA:** What I wanted to say is by this Friday,
23 we will have a very good idea of whether we're going to need
24 any more time.

25 **THE COURT:** Oh, you mean next week?

1 **MR. MORTARA:** The following week.

2 **MR. GARDNER:** Let me see if I can -- I actually think
3 we are ahead of schedule, and I suspect that we -- both sides
4 will have concluded by next Friday.

5 **THE COURT:** Not this Friday, next Friday?

6 **MR. GARDNER:** Correct. Not this Friday. We are
7 working, though, on availability --

8 **THE COURT:** That's fine. That's fine. Well, I'm
9 trying to make sure we take as much time as we want on this.
10 And it's very important and -- to build the record here. And
11 we'll go accordingly.

12 So, with that, I think that ends the day, and we'll start
13 again at 10:00 tomorrow.

14 This court stands adjourned.

15 **THE CLERK:** All right. This Honorable Court is now
16 adjourned for the day.

17 (Adjourned at 5:05 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of September 2024.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

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<p>0</p> <p>06 [1] 42/14</p>		
<p>1</p> <p>1 percent [2] 154/1 166/13</p> <p>1,170 [1] 220/20</p> <p>1,200 [1] 87/2</p> <p>1,379 [2] 129/21 130/13</p> <p>1,693 [1] 180/10</p> <p>1,729 [2] 136/18 136/18</p> <p>1.098 [1] 173/4</p> <p>1.5 [1] 205/16</p> <p>1.A1 [1] 220/18</p> <p>10 [13] 20/16 51/11 75/9 75/10 148/3 148/4 148/8 148/17 148/23 150/6 187/19 205/10 205/11</p> <p>10 percent [11] 148/4 148/8 148/9 148/20</p>	<p>2</p> <p>2 million [1] 54/8</p> <p>2 percent [3] 75/24 145/21 148/21</p> <p>2,532 [1] 137/18</p> <p>2.958 [1] 173/7</p> <p>20 [1] 93/22</p> <p>20 percent [4] 93/20 103/6 107/22 155/3</p> <p>20-year [1] 42/13</p> <p>20.24 [1] 143/6</p> <p>200 [5] 8/12 8/25 25/13 166/9 166/10</p> <p>2002 [1] 110/14</p> <p>2006 [2] 36/25 110/9</p> <p>2008 [1] 56/20</p> <p>2009 [2] 12/20 13/3</p> <p>2010 [1] 110/11</p> <p>2012 [1] 117/11</p> <p>2015 [1] 117/2</p> <p>2017 [1] 24/19</p> <p>2019 [2] 124/9 124/10</p> <p>2022 [5] 60/9 72/25 74/22 95/24 97/22</p> <p>2023 [8] 72/25 124/7 124/8 174/2 180/7 181/3 186/18 187/7</p> <p>2024 [8] 1/7 2/2 58/1 84/18 97/10 174/2 181/3 236/12</p> <p>2025 [7] 84/22 134/5 147/17 174/2 181/11 192/14 192/24</p> <p>2026 [2] 37/1 84/24</p> <p>2027 [13] 12/11 52/18 74/25 85/2 89/5 89/8 89/20 90/3 91/18 124/7 147/17 174/2</p>	<p>3</p> <p>3.1 percent [1] 137/7</p> <p>3.2 [1] 216/18</p> <p>3.2 million [1] 51/15</p> <p>3.5 [1] 154/15</p> <p>3.57 percent [1] 145/20</p> <p>3.6 percent [1] 142/8</p> <p>3.7 [1] 138/12</p> <p>30 [3] 93/13 126/7 187/25</p> <p>30 percent [7] 93/10 93/13 93/25 142/15 145/17 149/23 179/2</p> <p>30.6 percent [1] 203/15</p> <p>30.7 percent [1] 205/17</p> <p>300 [5] 14/9 25/14 31/23 68/25 86/23</p> <p>31 [8] 33/23 34/1 34/2 34/21 36/9 36/13 40/5 181/9</p> <p>310 [1] 25/2</p> <p>32 percent [1] 74/24</p> <p>32.7 percent [1] 178/9</p> <p>32.87 percent [1] 143/13</p> <p>33 percent [1] 49/23</p> <p>330 [3] 41/19 41/23 42/20</p> <p>34 [1] 179/16</p> <p>346 [1] 148/20</p> <p>35 [2] 132/15 180/3</p> <p>35 percent [2] 58/16 227/19</p> <p>37 [1] 92/6</p> <p>37.3 percent [1] 207/23</p> <p>37.4 percent [2] 175/15 176/16</p> <p>38.43 percent [1] 155/5</p> <p>397 [1] 139/19</p> <p>3:47 [1] 188/7</p>
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